

BIENNIAL REPORT
OF THE
ATTORNEY GENERAL
OF THE
STATE OF NORTH CAROLINA

VOLUME 27
1942-1944

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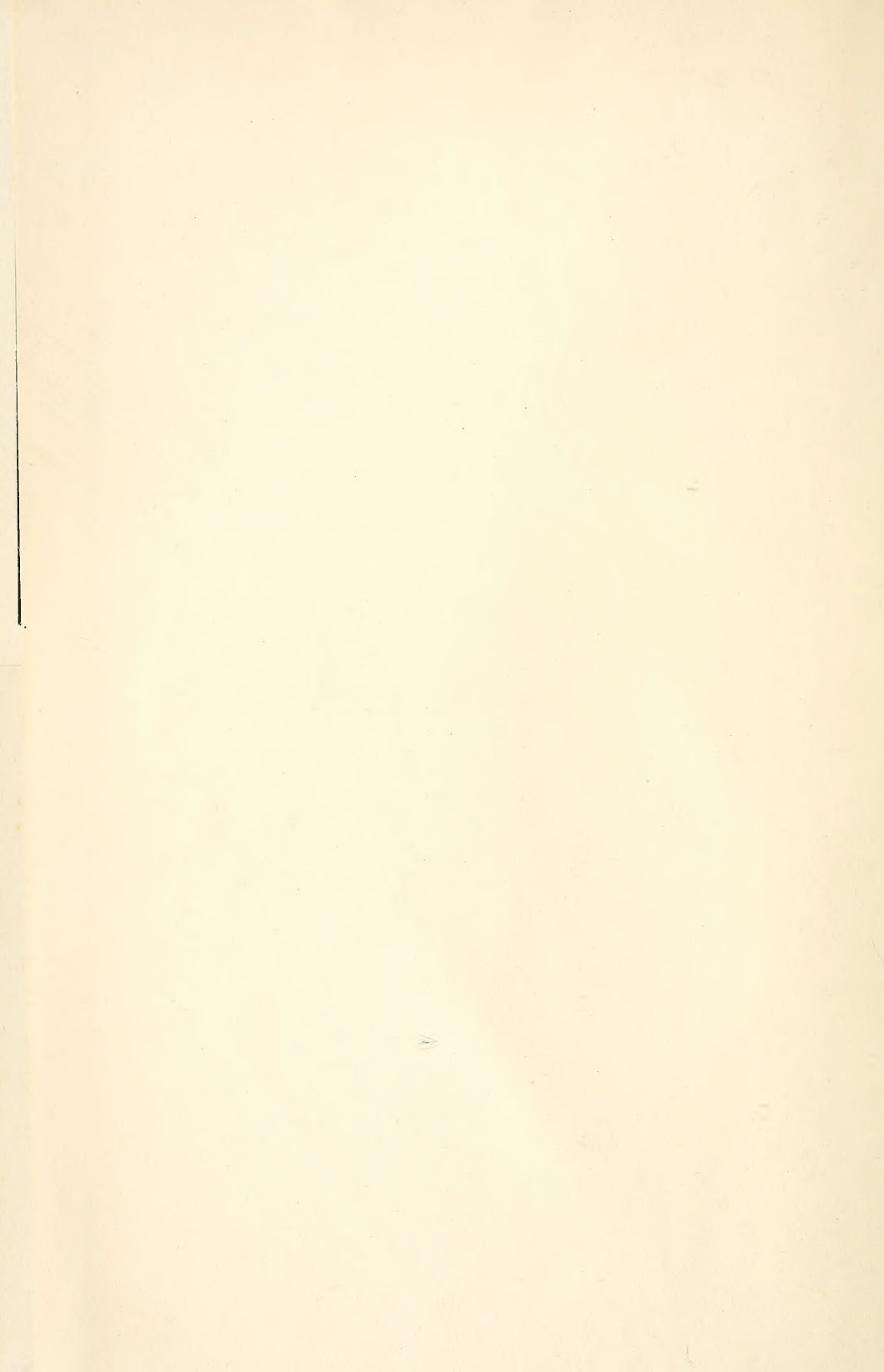
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BIENNIAL REPORT
OF THE
ATTORNEY GENERAL
OF THE
STATE OF NORTH CAROLINA

VOLUME 27
1942 - 1944

HARRY McMULLAN
ATTORNEY GENERAL

GEORGE B. PATTON
W. J. ADAMS, JR.
HUGHES J. RHODES
ASSISTANT ATTORNEYS GENERAL

LIST OF ATTORNEYS GENERAL SINCE THE ADOPTION OF CONSTITUTION IN 1776

	<i>Term of Office</i>
Avery, Waightsill	1777-1779
Iredell, James	1779-1782
Moore, Alfred	1782-1790
Haywood, J. John	1791-1794
Baker, Blake	1794-1803
Seawell, Henry	1803-1808
Fitts, Oliver	1808-1810
Miller, William	1810-1810
Burton, Hutchins G.	1810-1816
Drew, William	1816-1825
Taylor, James F.	1825-1828
Jones, Robert H.	1828-1828
Saunders, Romulus M.	1828-1834
Daniel, John R. J.	1834-1840
McQueen, Hugh	1840-1842
Whitaker, Spier	1842-1846
Stanly, Edward	1846-1848
Moore, Bartholomew F.	1848-1851
Eaton, William	1851-1852
Ransom, Matt W.	1852-1855
Batchelor, Joseph B.	1855-1856
Bailey, William H.	1856-1856
Jenkins, William A.	1856-1862
Rogers, Sion H.	1862-1868
Coleman, William M.	1868-1869
Olds, Lewis P.	1869-1870
Shipp, William M.	1870-1872
Hargrove, Tazewell L.	1872-1876
Kenan, Thomas S.	1876-1884
Davidson, Theodore F.	1884-1892
Osborne, Frank I.	1892-1896
Walser, Zeb V.	1896-1900
Douglas, Robert D.	1900-1901
Gilmer, Robert D.	1901-1908
Bickett, T. W.	1909-1916
Manning, James S.	1917-1925
Brummitt, Dennis G.	1925-1935
Seawell, A. A. F.	1935-1938
McMullan, Harry	1938-

LETTER OF TRANSMITTAL

1 November, 1944

To His Excellency

J. MELVILLE BROUGHTON, *Governor*
Raleigh, North Carolina

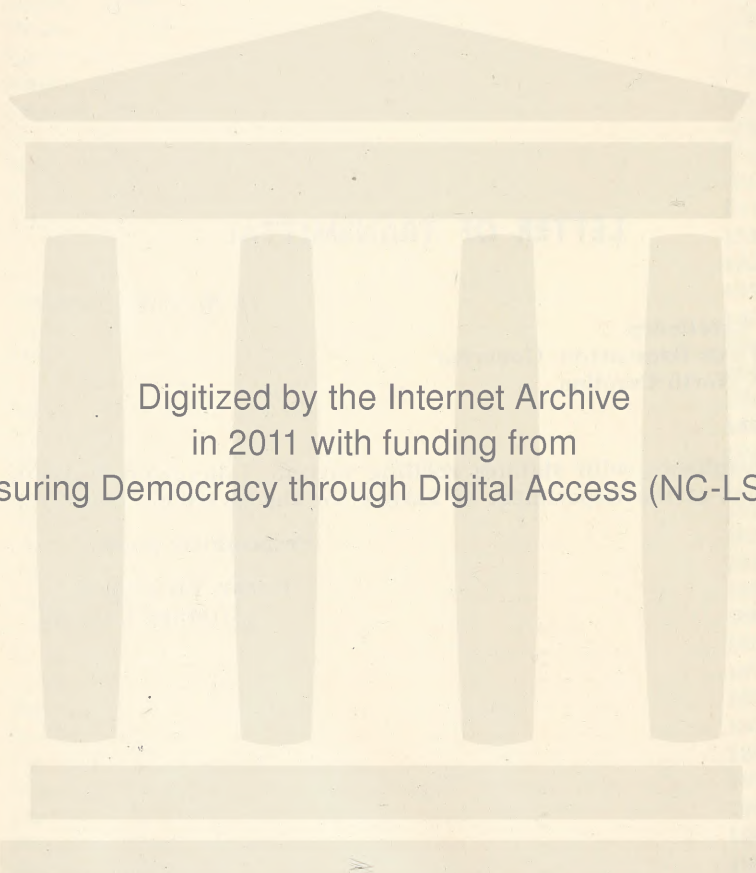
Dear Sir:

In compliance with statutes relating thereto, I herewith transmit the report of the Department of Justice for the biennium 1942-1944.

Respectfully yours,

HARRY McMULLAN,
Attorney General.

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EXHIBIT I

CIVIL ACTIONS DISPOSED OF OR PENDING IN THE COURTS OF NORTH CAROLINA AND IN OTHER COURTS

PENDING IN SUPERIOR COURTS OF NORTH CAROLINA

C. A. Blackwelder Will case (Stonewall Jackson Training School).
State ex rel. Beaufort County v. H. P. Webster.
Burroughs Adding Machine Company v. Gill, Commissioner of Revenue.
Church v. American Equitable Assurance Company, et al.
County of Craven v. Each and All Property Owners, etc.
R. L. Lewis and Huger King v. Charles M. Johnson, State Treasurer.
Morrison v. Williams, et al.
Plummer, et al. v. H. E. King, Trustee.
State ex rel. Department of Conservation and Development v. Odie Johnson, et al.
In Re: Liquidation of United Bank and Trust Company.
General Motors Corporation v. Doughton (two cases).
State ex rel. Maxwell, Commissioner of Revenue v. American Tobacco Company.
State ex rel. N. C. Corporation Commission v. Southern Railway Company.

DISPOSED OF IN SUPERIOR COURTS OF NORTH CAROLINA

Commissioners of Chowan County v. State Board of Assessment, et al.
M. D. Harris, et al. v. Maxwell, Commissioner of Revenue.
State ex rel. Johnson, State Treasurer v. Wachovia Bank and Trust Company.
B. S. Colburn v. First National Bank and Trust Company, et al.
City of Raleigh v. State Hospital at Raleigh.
Hunsucker, et al. v. Winborne, Commissioner, et al.
J. J. Johnson v. N. C. Department of Highway Patrol.
State ex rel. Utilities Commission v. Atlantic Greyhound Corp., et al. (2 cases).
State ex rel. Utilities Commission v. Atlantic Coast Line Railroad Company.
Arthur Pue, et al. v. Hood, Commissioner of Banks.
Southern Railway Company v. Rockingham County.
N. C. Mortgage Corporation v. Maxwell, Commissioner of Revenue.

W. F. Logan v. Cline, Sheriff, Commissioner of Revenue, et al.
State v. Thomas M. Stanton.
Geo. Kostakes, etc. v. Gill, Commissioner of Revenue.
Valentine, Executor v. Gill, Commissioner of Revenue.
Asheville Livestock Company v. Gill, Commissioner of Revenue.
Safrit v. Hocutt, Director of Highway Safety Division.
Brown v. Gill, Commissioner of Revenue.
Cooper v. Ward, Commissioner of Motor Vehicles.
Southern Dairies, Inc. v. Maxwell, Commissioner of Revenue.
Caswell Training School v. T. A. Loving Company.
James W. Davis, et al. v. Davis Hospital, Inc., et al.
Hyde County v. A. D. MacLean Estate, et al.
Eric Norden v. State Board of Education.

DISPOSED OF IN MUNICIPAL RECORDER'S COURT

State v. Nick D. Kaperonis.

PENDING BEFORE INDUSTRIAL COMMISSION

L. O. Hill v. Forsyth County Board of Education.

DISPOSED OF BEFORE INDUSTRIAL COMMISSION

L. L. Guy v. N. C. Board of Alcoholic Control.
Wilhemina H. Smith v. Thomasville Board of Education, et al.
Lois B. Callihan, et al. v. Board of Education, et al.
J. J. Johnson v. N. C. Department of Highway Patrol.
Jones, Administrator v. University of North Carolina.

DISPOSED OF IN NORTH CAROLINA SUPREME COURT

Arthur Pue, et al. v. Hood, Commissioner of Banks, 222 N. C. 310.
Mattie Gilmore, et al. v. Hoke County Board of Education, et al.,
222 N. C. 358.
Lola Beacham Callihan v. Board of Education, et al., 222 N. C.
381.
Dan W. McLean v. Durham County Board of Elections, 222 N. C. 6.
Valentine, Executor v. Gill, Commissioner of Revenue, 223 N. C.
396.
Thompson v. State of North Carolina, et al., 223 N. C. 340.
Hunsucker, et al. v. Stanley Winborne, et al., 223 N. C. 650.
Warren, et al. v. State Board of Assessment, et al., 223 N. C. 604.
James Cooper v. T. Boddie Ward, Commissioner, 224 N. C. 99.
State ex rel. Utilities Commission v. Atlantic Greyhound Corp.
(2), 224 N. C. 293.
State ex rel. Utilities Commission v. Atlantic Coast Line R. R.
Co., 224 N. C. 283.
In Re: Yelton, 223 N. C. 845.

PENDING IN UNITED STATES SUPREME COURT

Williams and Hendrix v. State of North Carolina (new case).

DISPOSED OF IN UNITED STATES SUPREME COURT

Eldon Steele v. State of North Carolina.

Williams and Hendrix v. State of North Carolina.

Charlie Herndon v. State of North Carolina.

Carl Lippard v. State of North Carolina.

Mayo v. United States of America.

PENDING IN UNITED STATES DISTRICT COURT

United States of America v. 166.77 acres in Buncombe County.
United States of America v. 1,028.238 acres in Onslow County
(Kesler).

United States of America v. 10,866.93 acres in Onslow County
(Wynne).

United States of America v. Southern States Power Company,
et al.

United States of America ex rel. Tennessee Valley Authority v.
Geo. G. Whitcomb, et al.

DISPOSED OF IN UNITED STATES DISTRICT COURT

United States of America v. Nathan Mayo, et al.

United States of America v. State of North Carolina (Test Farm
at Swannanoa).

PENDING IN DISTRICT COURT OF APPEALS

Jeannette A. Noel v. Edson B. Olds, Jr., et al. (Ackland Will
case).

DISPOSED OF BEFORE FEDERAL POWER COMMISSION

In re: Declaration of Intention of Nantahala Power and Light
Company, etc. (Fontana Project).

EXHIBIT II

LIST OF CRIMINAL CASES ARGUED BY THE ATTORNEY GENERAL AND
HIS ASSISTANTS BEFORE THE NORTH CAROLINA SUPREME
COURT: FALL TERM, 1942; SPRING TERM, 1943; FALL
TERM, 1943; SPRING TERM, 1944.

FALL TERM, 1942

- State v. Allen, from Johnston; murder first degree; defendant appealed; no error; 222 N. C. 145.
- State v. Anderson, from Wayne; manslaughter; defendant appealed; new trial; 222 N. C. 148.
- State v. Baker, from Cumberland; manslaughter; defendant appealed; new trial; 222 N. C. 428.
- State v. Barefield, from Craven; larceny; defendant appealed; appeal dismissed.
- State v. Baynes and Dunnagan, from Davidson; violating municipality ordinance; defendants appealed; Baynes, new trial; Dunnagan, reversed; 222 N. C. 425.
- State v. Bonner, et al., from Columbus; murder first degree; defendants appealed; new trial; 222 N. C. 344.
- State v. Broom, from Mecklenburg (2 cases) 1—murder first degree; 2—murder second degree; defendant appealed; new trial; 222 N. C. 324.
- State v. Champion, from Vance; murder second degree; defendant appealed; new trial; 222 N. C. 160.
- State v. Christopher, from Yancey; violating municipal ordinance; defendant appealed; reversed (per cur.) 222 N. C. 98.
- State v. Colson, from Currituck; violating liquor laws; defendant appealed; no error; 222 N. C. 28.
- State v. Cromer, from Stokes; felonious burning; defendant appealed; reversed; 222 N. C. 35.
- State v. David, from Lenoir; murder second degree; defendant appealed; new trial; 222 N. C. 242.
- State v. Davis, from Wilkes; assault with deadly weapon; defendant appealed; new trial; 222 N. C. 178.
- State v. Debnam, from Franklin; manslaughter; defendant appealed; new trial; 222 N. C. 266.
- State v. DeGraffenreid, from Lee; manslaughter; defendant appealed; new trial; 222 N. C. 113.
- State v. Dove, from Harnett; murder second degree; defendant appealed; appeal dismissed (per cur.); 222 N. C. 162.
- State v. Duncan, from Buncombe; bastardy; defendant appealed; affirmed; 222 N. C. 11.
- State v. Forte, from Forsyth; abortion; defendant appealed; reversed; 222 N. C. 537.

- State v. Goss, from Wilkes; manslaughter; defendant appealed; no error; 222 N. C. 751.
- State v. Hairston, from Forsyth; rape; defendant appealed; no error; 222 N. C. 455.
- State v. Harris, from Bertie; rape; defendant appealed; no error; 222 N. C. 157.
- State v. High, et al., from Wilson; operating junk yard in residential section; defendant appealed; reversed; 222 N. C. 434.
- State v. Howard, from Wake; embezzlement; defendant appealed; no error; 222 N. C. 291.
- State v. Jones, from Beaufort; assault with intent to commit rape; defendant appealed; affirmed; 222 N. C. 37.
- State v. H. King, from Buncombe; violating liquor laws; defendant appealed; appeal dismissed; 222 N. C. 137.
- State v. G. King, from Cabarrus; larceny; defendant appealed; no error; 222 N. C. 239.
- State v. McLeod, from Harnett; violating liquor laws; defendant appealed; error and remanded; 222 N. C. 142.
- State v. Meares, from Robeson; murder first degree; defendant appealed; no error; 222 N. C. 436.
- State v. Moore, from Columbus; nonsupport; defendant appealed; no error; 222 N. C. 356.
- State v. Neal, from Forsyth; murder first degree; defendant appealed; no error; 222 N. C. 546.
- State v. Norton, from Scotland; assault with deadly weapon; defendant appealed; new trial; 222 N. C. 418.
- State v. Patterson, from Craven; violating liquor laws; defendant appealed; appeal dismissed; 222 N. C. 179.
- State v. Reddick, from Forsyth; receiving stolen goods; defendant appealed; no error; 222 N. C. 520.
- State v. Reynolds, from Stokes; breaking and entering; defendant appealed; no error; 222 N. C. 40.
- State v. Shine, from Duplin; violating liquor laws; defendant appealed; no error; 222 N. C. 237.
- State v. Tennant, from Wake; embezzlement; defendant appealed; no error; 222 N. C. 277.
- State v. Todd, from Columbus; murder first degree; defendant appealed; reversed; 222 N. C. 346.
- State v. Tola, from Cumberland; violating liquor laws; defendant appealed; no error; 222 N. C. 406.
- State v. Vincent, from Durham; rape; defendant appealed; no error; 222 N. C. 543.
- State v. Ward, from Wake; embezzlement; defendant appealed; no error; 222 N. C. 316.
- State v. Wellman, from Iredell; rape; defendant appealed; no error; 222 N. C. 215.

DOCKETED AND DISMISSED ON MOTION

- State v. Phillips, from Durham.
- State v. Whetstine, from Rutherford.

SPRING TERM, 1943

- State v. Auston, from Guilford; murder second degree; defendant appealed; no error; 223 N. C. 203.
- State v. Baxley, from Robeson; statutory rape; defendant appealed; no error; 223 N. C. 210.
- State v. Boyd, et al., from Franklin; possessing burglar tools; defendants appealed; reversed; 223 N. C. 79.
- State v. Burrage, from Stanly; murder first degree; defendant appealed; new trial; 223 N. C. 129.
- State v. Clarke, et als., from Catawba; appeal from judgment absolute against bond; defendants appealed; appeal dismissed; 222 N. C. 744.
- State v. E. Davis, from Franklin; assault with deadly weapon with intent to kill; defendant appealed; new trial; 223 N. C. 57.
- State v. H. Davis, from Wake; nuisance, gambling, etc.; defendant appealed; affirmed; 223 N. C. 54.
- State v. Farrell, from Durham; rape; defendant appealed; new trial; 223 N. C. 321.
- State v. Friddle, et al., from Guilford; breaking, entering and larceny; defendants appealed; new trial; 223 N. C. 258.
- State v. Grass, from Cabarrus; murder first and second degrees; defendant appealed; no error; 223 N. C. 31.
- State v. Gray, from Mecklenburg; violating liquor laws; defendant appealed; no error; 223 N. C. 120.
- State v. Herndon, from Robeson; operating building for purpose of prostitution, etc.; defendant appealed; no error; 223 N. C. 208.
- State v. Hunt, et al., from Robeson; rape; defendants appealed; no error; 223 N. C. 173.
- State v. Lippard, et al., from Mecklenburg; conspiracy to violate liquor laws; defendants appealed; no error; 223 N. C. 167.
- State v. McKinnon, et al., from Moore; murder second degree; defendants appealed; no error; 223 N. C. 160.
- State v. Miller, et al., from Robeson; manslaughter; defendants appealed; new trial; 223 N. C. 184.
- State v. Nesbit, from Mecklenburg; Assault on female; no jurisdiction; appeal dismissed.
- State v. Pelley, et al., from Buncombe; appeal from judgment absolute against bond; Dorsett and Fisher appealed; affirmed; 222 N. C. 684.
- State v. Rice, from Madison; murder second degree; defendant appealed; new trial; 222 N. C. 634.
- State v. Smith, from Columbus; seduction; defendant appealed; no error; 223 N. C. 199.
- State v. Trippe, from Pasquotank; rape; defendant appealed; no error; 222 N. C. 600.
- State v. Utley, from Montgomery; murder first degree; defendant appealed; no error; 223 N. C. 39.

State v. Watson, from Bertie; murder first degree; defendant appealed; no error; 222 N. C. 672.
State v. Wilborn, (See "State v. Boyd, et al.").

DOCKETED AND DISMISSED ON MOTION

State v. Bryant, from McDowell.
State v. Isley, from Rockingham.
State v. Lee, from Camden.
State v. Moody, from Northampton.
State v. Wilfong, from Catawba.

FALL TERM, 1943

State v. Bentley, from Caldwell; assault with deadly weapon; defendant appealed; no error; 223 N. C. 563.
State v. Biggs, et als., from Guilford; murder first degree; defendants appealed; new trial; 224 N. C. 23.
State v. Cameron, et al., from Lee; larceny; defendants appealed; reversed; 223 N. C. 449.
State v. Cameron, from Lee; larceny; defendant appealed; no error; 223 N. C. 464.
State v. Campbell, from Durham; doing business without license; defendant appealed; reversed; 223 N. C. 828.
State v. Case, from Guilford; manslaughter; defendant appealed; no error (per cur.); 223 N. C.
State v. Cummings, from Robeson; assault on female; defendant appealed; no error (per cur.); 223 N. C.
State v. Davis, from Pasquotank; murder second degree; defendant appealed; no error; 223 N. C. 381.
State v. DeGraffenreid, from Lee; murder second degree; defendant appealed; new trial; 223 N. C. 461.
State v. Dillard, from Wayne; abortion; defendant appealed; no error; 223 N. C. 446.
State v. Ellerbee, from Richmond; manslaughter; defendant appealed; new trial; 223 N. C. 770.
State v. Epps, et al., from Robeson; larceny; defendants appealed; no error; 223 N. C. 740.
State v. Farrell, from Durham; rape; defendant appealed; no error; 223 N. C. 804.
State v. Grainger, from Columbus; murder first degree; defendant appealed; no error; 223 N. C. 716.
State v. Grass, from Cabarrus; murder first degree; defendant appealed; judgment affirmed; appeal dismissed (per cur.); 223 N. C.
State v. Gregory, from Johnston; assault with deadly weapon with intent to kill; defendant appealed; error and remanded; 223 N. C. 415.
State v. Harris, from Hoke; murder first degree; defendant appealed; no error; 223 N. C. 697.

- State v. Herndon, from Robeson; operating house of prostitution; defendant appealed; appeal dismissed.
- State v. C. Hill, et al., from Guilford; perjury; defendant Hill appealed; new trial; 223 N. C. 711.
- State v. N. Hill, from Guilford; violating liquor laws; defendant appealed; no error; 223 N. C. 753.
- State v. Holbrook, from Wilkes; larceny; defendant appealed; new trial; 223 N. C. 622.
- State v. Jackson, from Onslow; sale of beer and whiskey (two cases); defendant appealed; affirmed (per cur.); 223 N. C.
- State v. Lowery, from Rowan; involuntary manslaughter; defendant appealed; reversed; 223 N. C. 598.
- State v. McKeon, from Edgecombe; breaking, entering and larceny; defendant appealed; affirmed; 223 N. C. 404.
- State v. O'Connor, et al., from Harnett; forfeiture of bond; defendant surety appealed; affirmed; 223 N. C. 469.
- State v. Oxendine, et al., from Scotland; receiving stolen goods, etc.; defendants appealed; reversed; 223 N. C. 659.
- State v. Prince, from Swain; murder second degree; defendant appealed; new trial; 223 N. C. 392.
- State v. Redfern, from Wake; murder first degree; defendant appealed; no error; 223 N. C. 561.
- State v. Rising, from New Hanover; breaking, entering and larceny; defendant appealed; no error; 223 N. C. 747.
- State v. Smith, from Warren; murder first degree; defendant appealed; no error; 223 N. C. 457.
- State v. Suddreth, from Caldwell; violating liquor laws; defendant appealed; reversed; 223 N. C. 610.
- State v. Tyson, from Pitt; assault on female; defendant appealed; error and remanded; 223 N. C. 492.
- State v. Vicks, from Chowan; rape; defendant appealed; no error; 223 N. C. 384.

DOCKETED AND DISMISSED ON MOTION

- State v. Poole, from Pasquotank.

SPRING TERM, 1944

- State v. Ballard, from Harnett; assault with intent to commit rape; defendant appealed; no error (per cur.); 224 N. C.
- State v. Dill, from Madison; nonsupport; defendant appealed; reversed; 224 N. C. 57.
- State v. Dry, from Cabarrus; assault with deadly weapon; defendant appealed; appeal dismissed; 224 N. C. 224.
- State v. Gay, from Harnett; assault with intent to commit rape; defendant appealed; new trial; 224 N. C. 141.
- State v. Gordon, from Wake; violating liquor laws; defendant and petitioner appealed; defendant, no error; petitioner, appeal dismissed; 224 N. C. 304.

- State v. Graham, C., from Bladen; violating liquor laws; defendant appealed; error and remanded; 224 N. C. 347.
- State v. Graham, M., from Bladen; violating liquor laws; defendant appealed; no error; 224 N. C. 351.
- State v. Hall, from Cumberland; violating liquor laws; state appealed; reversed; 224 N. C. 314.
- State v. Ham, et al., from Johnston; robbery; defendant appealed; Ham and T. Hardy, no error; R. Hardy, reversed; 224 N. C. 128.
- State v. King, from Guilford; operating lottery; defendant appealed; no error; 224 N. C. 329.
- State v. Miller, et al., from Catawba; fornication and adultery; defendant Miller appealed; no error; 224 N. C. 228.
- State v. Nunley, from Rockingham; attempted larceny; defendant appealed; reversed; 224 N. C. 96.
- State v. Oldham, from Forsyth; vagrancy; defendant appealed; reversed; 224 N. C. 415.
- State v. O'Connor, et al., from Harnett; forfeiture of bond; surety defendant appealed; affirmed (per cur.); 224 N. C.
- State v. Register, et al., from Harnett; assault with deadly weapon with intent to kill; defendants appealed; no error (per cur.); 224 N. C.
- State v. Rivers, from Alamance; manslaughter; defendant appealed; no error; 224 N. C. 419.
- State v. Robinson, et al., from Forsyth; operating lottery; defendants appealed; error and remanded; 224 N. C. 412.
- State v. Sawyer, et al., from Camden; highway robbery; defendants appealed; no error; 224 N. C. 61.
- State v. Summerlin, from Caldwell; nonsupport; defendant appealed; reversed; 224 N. C. 178.
- State v. Todd, from Cumberland; murder second degree; defendant appealed; no error; 224 N. C. 358.
- State v. Truelove, et al., from Harnett, abduction; defendants appealed; no error; 224 N. C. 147.
- State v. Walsh, et al., from Caldwell; assault with intent to commit rape; defendants appealed; new trial; 224 N. C. 218.
- State v. Williams, et al., from Caldwell; bigamous cohabitation; defendants appealed; no error; 224 N. C. 183.

DOCKETED AND DISMISSED ON MOTION

State v. Couch, from Yadkin.

SUMMARY

Affirmed on defendant's appeal.....	66
Reversed on State's appeal.....	1
New trial or reversed on defendant's appeal.....	41
Error and remanded.....	5
Appeal dismissed.....	17

FEES TRANSMITTED BY ATTORNEY GENERAL TO STATE TREASURER SINCE
FEBRUARY TERM, 1942, THROUGH FEBRUARY TERM, 1944

State v. Smith	\$ 10.00
State v. Batson	10.00
State v. Reynolds	10.00
State v. King	10.00
State v. Dove	10.00
State v. Howard	10.00
State v. King	10.00
State v. Ward	10.00
State v. Shine	10.00
State v. Moore	10.00
State v. Tennant	10.00
State v. Reddick	10.00
State v. Duncan	10.00
State v. Tola	10.00
State v. Trippe	10.00
State v. Pelley	10.00
State v. Clarke	10.00
State v. Turner	10.00
State v. Gray	10.00
State v. Lippard	10.00
State v. Herndon	10.00
State v. Smith	10.00
State v. Auston	10.00
State v. Davis	10.00
State v. Davis	10.00
State v. Southern Railway	14.30
State v. McKeon	10.00
State v. Dillard	10.00
State v. Cameron	10.00
State v. Jackson	10.00
State v. Jackson	10.00
State v. Bentley	10.00
State v. Hill	10.00
State v. Grainger	10.00
State v. Case	10.00
State v. Epps	10.00
State v. Harris	10.00
State v. Cummings	10.00
State v. Ham, et al.	10.00
State v. Register, et al.	10.00
State v. Williams, et al.	10.00
State v. Truelove	10.00
State v. Gordon	10.00
State v. Ballard	10.00
State v. King	10.00
State v. Todd	10.00
State v. Miller	10.00
State v. Graham	10.00
State v. Hall	10.00

\$494.30

SUMMARY OF ACTIVITIES

STAFF PERSONNEL

On July 13, 1942, Mr. T. W. Bruton, Assistant Attorney General, was granted a leave of absence on account of having accepted a commission as Captain in the United States Army. Since that time Mr. Bruton has been promoted to the rank of Major and is now on active duty.

Mr. H. J. Rhodes, Attorney at Law of Burlington, was appointed Assistant Attorney General upon granting the leave of absence to Mr. Bruton and Mr. Rhodes has been serving in that capacity until this time.

Other important changes in personnel have occurred during the biennium. Mr. Harry W. McGalliard, who was Director of the Division of Legislative Drafting and Codification of Statutes, was called into service in August 1943, and was granted a leave of absence for the duration of the war. Mr. J. Bourke Bilisoly, who had been serving as a member of the staff of this Division, was named as Acting Director and has served in that capacity until the present time. Mr. Moses B. Gillam, Jr., was called into service in December 1943, and was granted a leave of absence. Mr. Joel Denton was appointed as a member of the staff to succeed Mr. Gillam. He served with us until he resigned, effective July 1, 1944, to accept a position in private employment. Mr. J. E. Tucker served as a member of the staff throughout the biennium.

For the last half of the second year of the biennium, the personnel of the staff of the Division of Legislative Drafting and Codification of Statutes was, as contemplated, reduced to a director and stenographer.

Mr. George B. Patton, Assistant Attorney General, has served throughout the biennium and Mr. W. J. Adams, Jr., Assistant Attorney General, has likewise served during this period. Mr. Adams is assigned to the Revenue Department under the terms of the statute and has had as his assistant, Mrs. Cornelia McKimmon Trott.

The secretarial personnel during the biennium has been as follows: Mrs. Margaret York Wilson, Mrs. Lorraine H. Allers, Miss Lillian Turner, Miss Effie McLean English and Miss Marjorie Mann.

DIVISION OF LEGISLATIVE DRAFTING AND CODIFICATION OF STATUTES

As was authorized by the 1941 General Assembly, a Legislative Edition of the General Statutes of North Carolina was prepared and submitted to the General Assembly of 1943. The preface of the Legislative Edition gave in full the legislative history of the General Statutes and the work done in its preparation by this office and the commissions, both legislative and voluntary, which had been set up to cooperate with the Attorney General's office in the preparation and submission of this extensive work. The Legislative Commission appointed by the General Assembly of 1941 filed its recommendations, which were made a part of the Legislative Edition, and recommended the enactment of the General Statutes in the form presented by this office. Chapter

33, entitled "An Act Revising and Consolidating the Public Statutes of the State of North Carolina," was unanimously enacted by the General Assembly, providing that this revision of our statutory law should be in force from and after the 31st day of December 1943, and providing that all public and general statutes not contained in the General Statutes of 1943 be repealed. Certain exceptions and limitations are set out in Chapter 164, entitled "Concerning the General Statutes of 1943." This enactment made the General Statutes the official statement of the statutory law of the State.

The publication of the General Statutes by The Michie Company was delayed on account of war conditions affecting the printing industry but all four volumes have now been distributed and are in the hands of the purchasers.

Chapter 192 of the Session Laws of 1943 authorized the purchase by the Governor and Council of State of not to exceed three hundred and fifty sets of the General Statutes, to be distributed to the judges of the Superior Court, the solicitors, the clerks of the Superior Court, and justices of the Supreme Court, the Supreme Court Library, and to various State officials, departments and agencies for any proper State use. Acting on this authority, the Governor and Council of State authorized the purchase of 293 sets at \$22.50 per set. This distribution was in addition to one hundred and seventy sets of the four-volume edition which were donated by the publisher, as a part of its contract for the publication, and distributed to members of the General Assembly of 1943.

Along with the submission of the Legislative Edition of the General Statutes to the General Assembly, there were submitted a great many recommendations of the Division correcting obvious errors in existing statutes, repealing obsolete statutes and clarifying obscure statutes. Joint committees in the House and Senate set up by the General Assembly of 1943 considered many of these recommendations and favorably reported the bill carrying many of the recommendations into effect. This bill was enacted as Chapter 543 of the Session Laws of 1943.

Due to the fact that there were many recommendations which the legislative committees were unable to consider on account of lack of time, the General Assembly, by Joint Resolution No. 23, set up a commission composed of twelve members, five from the Senate and seven from the House, to continue the study of the recommendations for statutory revision and correction and directed that the report should be filed at the next General Assembly. At the time this is written, the commission is considering various recommendations made by the division and other changes in statutory law which will be presented to the General Assembly in the report of the commission.

CONTINUOUS STATUTORY RESEARCH AND REVISION

Chapter 382 of the Session Laws of 1943 amended the Act creating the Department of Justice, by establishing a system of continuous statutory research and revision in the Division of Legislative Drafting and Codification of Statutes. This Act provides:

"In order that the laws of North Carolina, as set out in the General Statutes of North Carolina, may be made and kept as simple, as clear, as concise and as complete as possible, and in order that the amount of construction and interpretation of the statutes required of the courts may be reduced to a minimum, it shall also be the duty of the division of legislative drafting and codification of statutes to establish and maintain a system of continuous statute research and correction. To that end the division shall:

"1. Make a systematic study of the general statutes of the State, as set out in the General Statutes and as hereafter enacted by the General Assembly, for the purpose of ascertaining what ambiguities, conflicts, duplications and other imperfections of form and expression exist therein and how these defects may be corrected.

"2. Consider such suggestions as may be submitted to the division with respect to the existence of such defects and the proper correction thereof.

"3. Prepare for submission to the General Assembly from time to time bills to correct such defects in the statutes as its research discloses."

The author of this bill is Mr. Robert Moseley, member of the Greensboro, North Carolina Bar, who is a member of the House. In an excellent article appearing in the June 1944 issue of the *North Carolina Law Review*, Mr. Moseley gives a very complete statement of the object and purposes of this legislation and the things it is hoped to accomplish thereby. Anyone interested in this subject will gain a great deal of information on the reading of this article.

Due to the fact that the Division of Legislative Drafting and Codification of Statutes was unable to complete its work on the North Carolina Statutes until the latter part of the summer of 1944, very little work has been done as contemplated by this statute. The division has been coöperating with the commission appointed by the General Assembly of 1943, with a view of carrying forward the work necessary to correct the errors and omissions in the existing statutes as contemplated by the resolution appointing this commission. The division consists of a director and secretary. Its staff was reduced on January 1, 1944, which has necessarily imposed limitations on its accomplishments under this important statute. The work on the General Statutes having been completed and when the work of the commission studying the corrections and clarification of the statutes above referred to has been completed, it is planned to concentrate upon the work required by Chapter 382. It is obvious that to carry forward the important work contemplated by this statute, the personnel of this division should be increased. Recommendations with respect to this of a more specific character will be made during the 1945 session.

SUPPLEMENTS TO GENERAL STATUTES

The contract made with the publishers of the General Statutes contemplates that each six months there shall be issued a pocket supplement of each volume containing all statutory enactments thereafter made and annotations up to date. The first issue of this pocket

supplement has been promised by the publishers for some time during the month of September 1944. Following a meeting of the General Assembly and as soon thereafter as possible, another supplement will be issued codifying and annotating the laws enacted at that session. With these pocket supplements, the General Statutes will be kept up to date as to statutory changes and court decisions set out in the annotations.

LEGISLATIVE DRAFTING

It was a source of great satisfaction to the entire staff of the Attorney General's office, including the members of the Division of Legislative Drafting and Codification of Statutes, to be called upon to such a great extent by the members of the General Assembly of 1943 for assistance in the preparation of bills. With these calls, and with calls from State and local officials, the entire staff of the Attorney General's office was needed in the preparation of more than one thousand acts which were drafted in this office. This is a service which the office is very glad to render, with the hope that it may result in benefit to members of the General Assembly in bill-drafting and in clarity and unification of our statutes with existing laws. Appreciation is expressed for Joint Resolution No. 34, adopted by the General Assembly of 1943, with respect to this work.

DIVISION OF CRIMINAL AND CIVIL STATISTICS

During the biennium the work in this division has been in the charge of Mr. Clifton Beckwith. A report of the activities of this division has been prepared by Mr. Beckwith and is made a part of this statement. There is included as a part of the report a compilation of statistics covering the activities of our criminal courts, other than courts of justices of the peace, and a summarization of civil cases tried in our Superior Courts.

A recommendation was made in the last Biennial Report that a bill be enacted authorizing the inclusion in each bill of costs in each civil and criminal case of a fee of ten cents to be paid to the reporting officer of the superior and inferior courts making the reports, which by law are required to be made to this department. The making of these reports requires considerable amount of time and attention of the clerks and the payment of this fee would be a strong inducement to secure these reports promptly and completely.

STATE BUREAU OF INVESTIGATION

There is included in this biennial report a report made by Mr. Thomas Creekmore, Director of the Bureau of Investigation, covering fully the activities of his division during the biennium. The character of the work being done by the State Bureau of Investigation is being more fully understood and appreciated by the sheriffs and police officers, courts and the public concerned in criminal investigations. This bureau has made available for every section of the State the services of well-trained criminal investigators of crimes requiring scientific study. The bureau has been fortunate in maintaining a high

class of personnel during the biennium and, with the limited number of investigators, has done an outstanding work in many important criminal cases.

Recommendation: It is anticipated everywhere that following the ending of the war and the adjustments which will have to be made thereafter, we may reasonably expect a substantial increase in crime throughout the State. This increase, if it occurs, will make further demands upon this bureau and require the employment of an additional number of special agents. I recommend that an appropriation be made available in the event such condition arises, so that this need may be taken care of.

REVENUE DEPARTMENT AND MOTOR VEHICLE DEPARTMENT

The levy and collection of taxes imposed by the Revenue Act necessarily requires a large amount of legal assistance. Under the statute, Assistant Attorney General W. J. Adams, Jr., has during the biennium been assigned to the Revenue Department and as his assistant he has had the help of Mrs. Cornelia McK. Trott. With our constantly expanding tax system and tax collections, legal problems arising in this department have been greatly multiplied. The legal work required of the office of the Commissioner of Motor Vehicles has likewise been largely imposed upon Mr. Adams and his assistant. The heavy burden placed upon this office in performing its services constitutes part of the basis of my recommendation that the next General Assembly should authorize the appointment of one additional Assistant Attorney General. Under the law as it now is, the number of Assistant Attorneys General which may be appointed is limited to three.

In the event the General Assembly should authorize the increase of the number of Assistant Attorneys General to four, the staff of this office would still have all the work it could do. By comparison with the legal staffs in other states, it would seem that the staff in North Carolina, after this increase is made, will still be much less than any other state of comparable size. In Indiana, for instance, which is not as large a state as North Carolina, there are sixteen Assistant Attorneys General. Fortunately for us, the amount of tax litigation in this State has been small. If we had as much tax litigation as is found in other states, the staff provided would be totally inadequate to handle it.

OFFICE CONFERENCES AND CONSULTATIONS WITH STATE OFFICES AND DEPARTMENTAL OFFICIALS

As required by the State Constitution, Article III, Section 14, and the laws enacted in pursuance thereto, this office has continued to serve as the legal adviser for the executive department. Throughout the biennium we have had frequent conferences with each of the State offices and departmental officials and, in many cases, have rendered oral advisory opinions. We have participated in many conferences held by various departments in the settlement of problems presented.

ATLANTIC AND NORTH CAROLINA RAILROAD

The General Assembly of 1943 passed an Act, Chapter 412, authorizing a loan by the State to the Atlantic and North Carolina Railroad Company of \$200,000, to be used with \$400,000 provided by the United States Navy in a rehabilitation program of the railroad.

The enactment of this legislation has resulted in the execution of a contract between the Bureau of Yards and Docks of the United States Navy and the Atlantic and North Carolina Railroad Company and the Atlantic and East Carolina Railway Company, providing for the expenditure of the \$600,000, together with substantial expenditure by the Atlantic and East Carolina Railway Company, chargeable to maintenance for the complete overhauling and rehabilitation of the tracks and structures of this railroad.

As a result, the railroad will replace the old worn out 50 lb. rail with 80 lb. or 90 lb. rails from Goldsboro to Morehead City. Extensive drainage and ballasting projects have been carried on, and many of the bridges and structures rebuilt. The railroad, at the completion of the work, will be in excellent condition to handle the heavy traffic which it is now required to transport.

The loan made by the State will be repaid in a period of five years by additional revenues received by the Atlantic and North Carolina Railroad Company from increased rentals paid by the operating company. The operating company has agreed to pay an additional rent until these advances have been repaid, representing 5 per cent gross revenues in excess of \$475,000.

The advances made by the Navy Department are to be paid by the operating railway by percentage reduction on navy freight and cancellation of switching charges in the Cherry Point Base.

At the end of the operations, the Atlantic and North Carolina Railroad Company will, without cost to itself, have the completely rebuilt roadway and track.

The rehabilitation program during the biennium has required continuous legal assistance from this Office in the negotiation and preparation of the numerous contracts and amended lease involved therein.

With the increased rentals now being paid by the operating railroad, the Atlantic and North Carolina Railroad Company should, within a few years, pay off the indebtedness now due the State. Since the \$200,000 loan, above referred to, has been made, the Atlantic and North Carolina Railroad Company has paid on its account the sum of \$28,857.02. Indications are that the great base at Cherry Point will be permanent in character and insure a large volume of freight and passenger business to this railroad.

During the biennium, under the authority of Chapter 443 of the Session Laws of 1943, the State Treasurer has taken up the outstanding mortgage bonds of the Atlantic and North Carolina Railroad Company, and the State is now the sole creditor of this company.

ADVISORY OPINIONS TO LOCAL OFFICIALS

During the biennium, the Department has continued the long standing custom of furnishing advisory opinions to county, city and local officials upon the many questions of administrative law and procedure which have arisen in local government. The opinions of this office, while not legally binding on the agency requesting same, have been accepted as the method of settlement of numerous questions which have arisen.

The efforts of this office to respond to numerous requests received throughout this State for this character of advice have required extensive investigations of the law, and have constituted an important part of our work. An effort is always made to secure the requests for the opinions through the local legal advisers of the various local units and clear the opinion of the office through them.

Available funds do not permit the publication in full of the numerous opinions rendered to local officials. Digests of these opinions, however, are published periodically in *Popular Government*, the magazine of the Institute of Government of the University of North Carolina. Summaries of these opinions affecting municipalities are carried in a digest mimeographed by the North Carolina League of Municipalities. The press of the State has carried periodically digests of all opinions of general application.

STATE BANKING COMMISSION

As an *ex officio* member of the State Banking Commission, the Attorney General has sat with meetings of this Commission throughout the biennium. The law creating this Commission makes the Attorney General and the State Treasurer *ex officio* members thereof, and includes five members appointed by the Governor.

The Commission meets quarterly and upon special call. A report of its activities will be made through the Commissioner of Banks.

Reference is made to the case of Arthur Pue v. Hood, Commissioner of Banks, 222 N. C. 310, in which our courts upheld the discretionary power of the Banking Commission to refuse the application for a charter by an industrial bank.

TEACHERS' AND STATE EMPLOYEES' RETIREMENT SYSTEM IN
NORTH CAROLINA

As required by the Act, Chapter 25, Public Laws 1941, the Attorney General has continued to act as the legal adviser of the Board of Trustees.

The operations of this Agency have required, at frequent intervals, the advice of this office. Thus far, no litigation has arisen respecting its activities.

UNEMPLOYMENT COMPENSATION COMMISSION

As requested by the Unemployment Compensation Commission, the Attorney General's Office has furnished the legal opinions on important questions which have arisen in connection with the application of its

laws during the biennium. The Commission has its own able legal staff, but from time to time, it has found it desirable to call upon this office for legal opinions, which we have always been glad to render.

SOCIAL SECURITY LAWS

During the biennium, this office has continued to act as the legal adviser for the State Board of Charities and Public Welfare. The extensive operations of the State Board of Charities and Public Welfare and its intimate contact with the life of the people of the State have given rise to numerous, and sometimes complicated, legal questions. Numerous opinions have been furnished to the State Board and its departments, particularly the department concerned with child welfare in adoption proceedings throughout the State.

This office has likewise been called upon to render legal opinions and offer advice to the State Commission for the Blind. Important questions of relationships with the Federal Government have arisen during the biennium as to the work carried on by the workshops for the blind, operated by the State Commission for the Blind. Satisfactory adjustments for the controversy relating to this matter have been worked out by conferences with Federal officials.

STATE DEPARTMENT OF AGRICULTURE

The State Department of Agriculture, in the performance of the many and varied duties assigned by law to it and to the Commissioner of Agriculture and to the State Board of Agriculture, has had frequent occasions to call upon this office for services and legal advice. Numerous office conferences have been held and on occasions when public hearings were necessary to be had, involving adoption of rules and regulations, and in the enforcement of regulatory laws as to seed, feeds, and fertilizers and inspection of foods, etc., members of the Staff of this office have been called upon to participate.

The broad powers given to the Commissioner of Agriculture and the State Board of Agriculture and the expanding function performed by this important Department require frequently a great deal of legal advice and service in ways too numerous to be mentioned. In all of which, we have had the finest coöperation from the Commissioner of Agriculture and the officials of his Department.

SUMMARY OF THE CONSTITUTIONAL AND STATUTORY DUTIES OF THE ATTORNEY GENERAL

To make a report upon all the activities of the Attorney General and this Department, it would be necessary to go into greater detail than is possible in this summary.

References are herein given to provisions of the Constitution of North Carolina, and laws enacted in pursuance thereto, prescribing the duties and functions of the Attorney General.

As legal adviser to the Council of State and as a member of the various boards and commissions hereinafter listed, the participation of the Attorney General in the consideration of matters coming before

meetings of the Council of State and such boards and commissions will be disclosed in the reports made therefrom. It is not required that they should be further detailed in this Report.

The Constitution of North Carolina, Article III, Section 13, provides that the duties of the "Attorney General shall be prescribed by law." Pursuant to this section, the General Assembly has vested in the Department of the Attorney General the following powers, obligations, and duties:

G. S. 114-2. "Duties.—It shall be the duty of the attorney general—

"1. To defend all actions in the supreme court in which the state shall be interested, or is a party; and also when requested by the governor or either branch of the general assembly to appear for the state in any court or tribunal in any cause or matter, civil or criminal, in which the state may be a party or interested.

"2. At the request of the governor, secretary of state, treasurer, auditor, corporation commissioners, insurance commissioner or superintendent of public instruction, he shall prosecute and defend all suits relating to matters connected with their departments.

"3. To represent all state institutions, including the state's prison, whenever requested so to do by the official head of any such institution.

"4. To consult with and advise the solicitors, when requested by them, in all matters pertaining to the duties of their office.

"5. To give, when required, his opinion upon all questions of law submitted to him by the general assembly, or by either branch thereof, or by the governor, auditor, treasurer, or any other state officer.

"6. To pay all moneys received for debts due or penalties to the state immediately after the receipt thereof into the treasury."

In addition to these duties, the following ones are prescribed:

To institute actions to recover taxes due under the Revenue Act (G. S. 105-239), and to approve all tax refunds made by the State (G. S. 105-407).

To enforce the statutes relative to monopolies and trusts (G. S. 75-9 to 75-15).

To institute actions to prevent *ultra vires* acts on the part of corporations, or to dissolve corporations for certain offenses (G. S. 55-47, 55-124, 55-126).

To institute quo warranto proceedings to oust persons who have usurped, who unlawfully hold, or who have forfeited public offices, and to begin actions to protect State lands (G. S. 1-515).

To see that the solicitors prosecute violations of the act relating to the practice of medicine (G. S. 90-21).

To enforce charitable trusts (G. S. 55-47).

To prescribe the rules of practice for land registration under the Torrens Act (G. S. 43-3).

To institute proceedings for the dissolution of fraternal insurance societies (G. S. 58-297 to 58-298).

To appear on behalf of the court or other officers on appeal in contempt proceedings (G. S. 5-3).

To investigate extradition cases, at the request of the Governor (G. S. 15-58).

To institute actions to enforce the rulings and orders of the Utilities Commission, and to represent said Commission in the enforcement of intrastate rates before the Interstate Commerce Commission and in federal or state courts (G. S. 62-63 and 62-6).

To give advice to the State Board of Elections as to the form of ballots (G. S. 163-141).

To institute action against persons, firms or corporations who violate the terms of the act regulating the quality of agricultural seeds. This duty may be delegated to the attorney of the county or city in which the violation occurred (G. S. 106-284).

To approve deeds and grants to the State of property given to, or purchased by, it for park purposes (G. S. 113-34).

To collect from inmates of state institutions the cost of their upkeep, provided they are able to pay (G. S. 143-124).

To approve the grant of easements by state institutions to public-service corporations (G. S. 143-151).

To act as legal adviser and institute necessary condemnation proceedings for the North Carolina Cape Hatteras Seashore Commission (Ch. 257, P. L. 1939).

To enforce rules and regulations adopted by the Commissioner of Labor relating to safety devices (G. S. 95-13).

To witness the burning of cancelled State bonds and coupons (G. S. 142-13).

To collect the delinquent taxes due the State Board of Health (G. S. 130-13).

The Attorney General is a member of, or adviser to, the following boards, councils, and commissions: Legal adviser to the Executive Department (Const., Art. III, S. 14); member of the State Board of Assessments (G. S. 105-273), of Advisory Board of Paroles (G. S. 148-50), of State Banking Commission (G. S. 53-92), of Board of Public Buildings and Grounds (G. S. 129-2), of Municipal Board of Control (G. S. 160-195), of the Eugenics Board (G. S. 35-40); and the Board of Advisers of the World War Veterans Loan Fund (G. S. 143-71).

APPEALS IN CRIMINAL CASES

In Exhibit II will be found a list of criminal cases which were argued by the Attorney General and his Assistants before the Supreme Court for the Fall Term 1942, Spring Term 1943, Fall Term 1943, and Spring Term 1944.

SUMMARY OF IMPORTANT CIVIL AND CRIMINAL CASES

The following is a brief statement of matters involved in civil and criminal cases of more than usual interest and importance.

CIVIL CASES

Dan W. McLean v. Durham County Board of Elections, 222 N. C. 6

The plaintiff filed a petition in the Superior Court of Durham County for a mandamus to require the Durham County Board of Elections to print petitioner's name on the official ballot for the November 1942,

election as the Republican candidate for Clerk of the Superior Court of Durham County. The nomination was made by the convention method instead of by participation in the primary election. A demurrer was filed to the petition in the Superior Court and when the cause came on to be heard on the demurrer, an order was entered sustaining the demurrer and denying the writ of mandamus. The plaintiff excepted and appealed to the Supreme Court. The case was heard in the Supreme Court and the judgment of the lower court was affirmed.

Arthur Pue, et al. v. Gurney P. Hood, Commissioner of Banks, et al.,
222 N. C. 310

The plaintiffs filed with the Secretary of State of North Carolina a proposed certificate of incorporation of an industrial bank. The Commissioner of Banks, after holding a public meeting, found certain facts and concluded that in his opinion the public convenience and advantage would not be promoted by the establishment of the proposed bank. The report was submitted to the State Banking Commission which directed the finding of additional facts and approved his conclusion. Thereafter, his conclusion was certified to the Secretary of State who declined to issue the proposed charter. The plaintiffs then instituted an action in the Superior Court of Guilford County to require the issuance of a charter to the proposed bank. The case was removed to Wake County and the defendants filed a demurrer to the complaint, on the ground that the complaint did not state facts sufficient to constitute a cause of action. When the cause came on to be heard in the Superior Court of Wake County, the demurrer was sustained and judgment entered dismissing the action. Plaintiff excepted and appealed to the Supreme Court and, upon the matter being heard in the Supreme Court, the judgment of the court below was affirmed.

J. M. Hunsucker, et al. v. Stanley Winborne, et al., Constituting the
Municipal Board of Control of North Carolina, 223 N. C. 650

The Municipal Board of Control of North Carolina, upon petition being filed on January 25, 1943, entered an order changing the name of the Town of Hemp to that of Robbins. The plaintiffs, who were citizens and taxpayers of the municipality, instituted an action to restrain the execution of the order changing the name of the Town of Hemp to Robbins. The defendants filed a demurrer to the complaint and, upon the hearing in the Superior Court of Wake County, the demurrer of the defendants was sustained. The temporary restraining order theretofore granted was dissolved and the action dismissed. The plaintiffs appealed to the Supreme Court of North Carolina. The Supreme Court, in affirming the judgment of the court below, held that if the Municipal Board of Control should err in its findings, the error may be corrected by the Superior Court upon a writ of *certiorari* but there is no provision in the statute for an appeal.

D. M. Warren, et al. v. A. J. Maxwell, et al., 223 N. C. 604

The plaintiffs, who constitute the Board of County Commissioners Board of Equalization and Review and Tax Supervisors of Chowan County, sought a peremptory mandamus to require the receivers of the Norfolk Southern Railroad Company to list with the State Board of Asséssment for the year 1941, as a part of its track, roadbed and right of way, that part of its road running from Edenton, in Chowan County, to the Virginia state line, and to compel the State Board of Assessment to include the same in determining the pro rata part of the total valuation of the railroad in North Carolina to be apportioned to Chowan County for that year. In the Superior Court of Wake County, the defendants demurred *ore tenus* to the complaint on the ground that it failed to state a cause of action. The trial judge reserved his ruling on the demurrer and heard the matter on its merits. At the conclusion of all the evidence, upon motion of the defendants, judgment was entered nonsuiting the plaintiffs. Upon appeal to the Supreme Court, the judgment of the lower court was affirmed.

State of North Carolina ex rel. North Carolina Utilities Commission v. Atlantic Greyhound Corporation, et al., 224 N. C. 293

The North Carolina Utilities Commission, in amending Rule No. 22 of its rules and regulations for the operation of union bus stations, required carriers operating from a common station where tickets are sold to a common destination to honor tickets of one another between said points. After the entry of the regulation making this change, the defendants, who are common carriers by motor vehicles engaged in the transportation of passengers within the State of North Carolina, filed with the Utilities Commission a special appearance and moved to vacate the amendment to Rule No. 22. The Utilities Commission denied the relief sought and the defendants appealed to the Superior Court of Wake County. In the Superior Court, the Utilities Commission entered a motion to dismiss the appeal on the ground, among others, that the amendment to the rule objected to did not afford grounds and basis for an appeal by the defendants. The trial judge allowed the motion and judgment was entered dismissing the appeal. Thereupon, the defendants appealed to the Supreme Court. The Supreme Court, in affirming the judgment of the court below, held that no procedure for appeals to the courts from rules and regulations of the Utilities Commission having been prescribed by statute, the validity thereof could not be challenged by appeal.

State of North Carolina ex rel., Utilities Commission v. Atlantic Greyhound Corporation, et al.

The North Carolina Utilities Commission entered a general order or regulation requiring that the destination and connections of all buses operating out of union station be announced. The defendants, who are carriers and would be affected by the order or regulation, appeared before the Utilities Commission and moved that the order

or regulation be vacated. Upon the refusal of the Utilities Commission to vacate the order or regulation, the defendants appealed to the Superior Court of Wake County. The Utilities Commission made a motion in the Superior Court of Wake County to dismiss the appeal on the ground that the promulgation of this rule or order did not afford ground and basis for an appeal by the defendant. The court allowed the motion and entered judgment dismissing the appeal. The defendants gave notice of appeal to the Supreme Court but have not, as yet, perfected their appeal.

State of North Carolina ex rel., Utilities Commission v. Atlantic Coast Line Railroad Company, 224 N. C. 283

The North Carolina Utilities Commission entered an order holding that the pulpwood rates contained in the Atlantic Coast Line Railroad Company's tariff schedule, to the extent that they exceeded the maximum level permitted under an outstanding order of the Commission dated June 12, 1939, were unlawful and that the continued refusal to obey the previous order of the Commission rendered the Railroad Company liable to an action for the penalty prescribed by the statute. The defendant excepted to this order on the ground that the Utilities Commission was without authority to issue the order for the reason that the Commission had not proceeded in accordance with the statute, and that the tariff filed by the defendant was valid in every respect. The defendant's exceptions were overruled and, upon appeal to the Superior Court of Wake County, the ruling of the Utilities Commission was in all respects affirmed. Upon appeal to the Supreme Court of North Carolina, the judgment of the Superior Court was upheld.

INDUSTRIAL COMMISSION CASES

Gilmore v. Board of Education

This was an action instituted by the widow and children of Dean Gilmore, deceased, against the Hoke County Board of Education and its insurance carrier and the State School Commission. Gilmore suffered an injury to his right leg in a fall sustained while washing windows in the new gymnasium of the Hoke County High School. He later partially recovered from the injury but died before being able to return to work. Upon a hearing before the Commissioner, compensation was awarded against the Hoke County Board of Education and its insurance carrier. The Commissioner held that there was no liability as against the State School Commission. The same result was reached by the Full Commission and upon appeal to the Superior Court of Hoke County, the findings of fact and conclusions of law of the Commission were affirmed. The defendants appealed to the Supreme Court of North Carolina. The Supreme Court, in reversing the judgment of the court below, held that upon the evidence in the record, the death of Gilmore did not result proximately from the accident and that compensation was not allowable. *Gilmore v. Board of Education, 222 N. C. 358.*

Callihan v. Board of Education

This was an action brought before the Industrial Commission against the Board of Education of Robeson County, the State School Commission, et al., by the widow and children of William B. Callihan, deceased, for compensation under the provisions of the Workmen's Compensation Act. Callihan was a teacher of vocational agriculture in the Robeson County schools and was killed in an automobile accident on a public highway en route from St. Pauls to Lumberton to attend a monthly meeting in connection with his vocational work. The Commission held that the Robeson County Board of Education was the sole employer and made an award against the County Board of Education and its insurance carrier. The Robeson County Board of Education and its insurance carrier appealed to the Superior Court, where the award was sustained and an appeal was taken to the Supreme Court. In the Supreme Court the judgment of the court below was sustained. *Callihan v. Board of Education*, 222 N. C. 381.

*J. J. Johnson v. North Carolina Department of Highway Patrol,
Department of Revenue*

This was an action brought before the Industrial Commission by J. J. Johnson, a member of the North Carolina State Highway Patrol, on account of injuries sustained by jumping or stepping from the porch of his home in Alexander County. At the time of the injury, plaintiff had gone to his home for the purpose of eating his lunch. As he started to leave his house, he twisted his ankle by either jumping from or stepping from his porch instead of using the steps of the porch. The hearing Commissioner denied compensation and his action was approved upon appeal to the Full Commission. The plaintiff thereupon appealed to the Superior Court of Alexander County and the trial judge entered judgment affirming the award of the Industrial Commission, denying compensation to the plaintiff. No appeal was taken from this judgment.

*Kenneth M. Jones, Administrator of the Estate of Hollis Snipes,
Deceased v. University of North Carolina*

This was an action brought by the administrator of the estate of Hollis Snipes, deceased, before the Industrial Commission, seeking to recover compensation under the provisions of the Workmen's Compensation Act for the death of Hollis Snipes, an employee of the University of North Carolina. Snipes sustained an injury by an accident arising out of and in the course of his employment when he was cut on the back of the left hand with a scythe. After several days had intervened, he was taken to a hospital in Durham. On the tenth day in the hospital, after he had almost entirely recovered, he developed pneumonia and within a short time died. Upon a hearing before the Commissioner, it was found that Snipes died from pneumonia and that the pneumonia was in no way related to the injury by accident to his hand. Claim for compensation was denied and the defendant did not appeal.

Jeannett A. Noel v. Edson B. Olds, et al. (Ackland Will Case)

A statement of this case was contained in the last Biennial Report, appearing on pages 25, 26, and 27. At the time this Report was filed, the case was pending on appeal in the United States District Court of the District of Columbia.

In this case, the next of kin of William Hayes Ackland were seeking to be declared entitled to receive the residuary trust created by Mr. Ackland, amounting to approximately \$1,400,000, which had been willed to Duke University to create an art museum and memorial to the testator. Upon refusal of Duke University to accept the gift, the University of North Carolina intervened and asserted the right to receive the gift under the *cy pres* doctrine. Rollins College also claimed the benefit of the fund under the same doctrine.

Former Governor O. Max Gardner was first to present this matter to the Board of Trustees of the University of North Carolina, and proposed to handle the litigation for the State without any compensation for his services. The Attorney General has appeared in the litigation with Governor Gardner and his Washington, D. C. law firm. The case was ably argued by Governor Gardner for the University of North Carolina in the Circuit Court of Appeals of the District of Columbia, and resulted in an opinion written by Justice Justin Miller, in which the *cy pres* doctrine was upheld and declared applicable to the case. The motion of the University of North Carolina to intervene was allowed and the case remanded to the District Judge for further procedure in accordance with the opinion.

Justice Bailey, the District Judge, has entered an order asking for recommendations from the Trustees as to what institution of learning should be the main beneficiary of the gift from Mr. Ackland, and this matter is now pending in the District Court.

W. F. Logan v. J. R. Cline, Sheriff, Edwin Gill, Commissioner of Revenue of North Carolina, and Charles M. Johnson, Treasurer

This was an action instituted in the Superior Court of Cleveland County to recover privilege taxes assessed against plaintiff under the authority of Section 150 of the Revenue Act, and paid under protest. Judgment was rendered for the defendants and no appeal was taken by the plaintiff.

State v. Thomas M. Stanton

This was a prosecution in the Superior Court of Wake County commenced at the instance of the Commissioner of Revenue and based upon the defendant's violation of the provisions of Section 336 of the Revenue Act in failing to file his income tax return for the year 1940. After a true bill of indictment had been found by the Grand Jury, the defendant paid to the Commissioner of Revenue the sum of \$686.89, representing all income tax, penalty and interest due for the years 1937-1940, both inclusive. At the trial, the defendant pleaded *nolo contendere*, whereupon, upon the recommendation of

the Commissioner, the Court continued prayer for judgment for five years on condition that the defendant annually file income tax returns as provided by law, and pay the costs.

George Kostakes, Trading as Kostakes Novelty Company v. Edwin Gill, Commissioner of Revenue and G. Mack Riley, Sheriff of Mecklenburg County

In this action in the Superior Court of Mecklenburg County, the plaintiff sought an injunction against the defendants for the purpose of restraining them from proceeding with a tax execution against plaintiff's property. The Court dissolved the restraining order, and the case was settled by nonsuit upon the execution by the plaintiff of a note and mortgage for the tax indebtedness.

G. H. Valentine, Executor of the Estate of Charles Treadwell Trask v. Edwin Gill, Commissioner of Revenue

This was a controversy without action to determine whether the plaintiff was liable for inheritance tax assessed by the defendant and paid by the plaintiff under protest. The action involved a construction of Section 12 of the Revenue Act. Judgment was rendered in the Superior Court for the defendant. This judgment was affirmed on appeal to the Supreme Court. See 223 N. C. 396.

Asheville Livestock Yards v. Edwin Gill, Commissioner of Revenue
(2 cases)

These were actions brought in the Superior Court of Buncombe County to recover privilege taxes assessed by defendant under Section 115 of the Revenue Act, and paid by plaintiff under protest. Judgment was rendered for plaintiff, and the defendant did not appeal.

Leonard Safrit v. Ronald Hocutt, Director, Highway Safety Division

This was a petition for the restoration of petitioner's driver's license. The matter was heard in the Superior Court of Carteret County. Judgment was rendered for the respondent, and no appeal was taken.

C. B. Brown v. Edwin Gill, Commissioner of Revenue

This was an action instituted in the Superior Court of Onslow County for the recovery of sales tax paid under protest to the defendant by the plaintiff. After a thorough investigation, the defendant consented to a judgment for plaintiff.

James Cooper v. T. Boddie Ward, Commissioner of Motor Vehicles

This was an action instituted in the Superior Court of Wake County by which the plaintiff sought a mandamus to compel defendant to return his driver's license which had been taken up by the Superior Court of Forsyth County. Judgment was rendered for the defendant

in the Superior Court. On appeal, the Supreme Court affirmed the judgment of the lower court, dismissing this action, but giving plaintiff the requested relief by treating the action as a petition for a writ of *certiorari* to the Superior Court of Forsyth County, and granting the writ and correcting the judgment of the Superior Court of Forsyth County. See 224 N. C. 99 and 224 N. C. 100.

State v. Nick D. Kaperonis

This was a prosecution commenced in the Recorder's Court of the City of Charlotte at the instance of the Commissioner of Revenue against the defendant for a violation of Section 422 of the Revenue Act in the alleged willful filing of false sales tax returns. Upon the payment to the State, or a security for payment to the State, of over \$16,000 in sales tax, penalties and interest, the Court accepted the defendant's plea of *nolo contendere* and continued prayer for judgment indefinitely.

North Carolina Mortgage Corporation v. A. J. Maxwell, Commissioner of Revenue (two cases)

The plaintiff submitted to a nonsuit in these actions in the Superior Court of Wake County, which involved franchise taxes on corporations formed to liquidate mortgages or mortgaged property taken in foreclosure.

*Burroughs Adding Machine Company v. Edwin Gill,
Commissioner of Revenue*

This is an action commenced in the Superior Court of Wake County by the plaintiff, a foreign corporation, for the recovery of income and franchise taxes based on the alleged invalidity of the allocation formula prescribed in Sections 210 and 311 of the Revenue Act for the determination of the portion of plaintiff's capital stock, surplus, and undivided profits, and the portion of plaintiff's income, to be taxed by North Carolina. Answer has been filed and this action is now pending.

General Motors Corporation v. Doughton (two cases)

These actions were instituted in the Superior Court of Wake County in 1926 for the recovery of privilege license taxes for the sale of automobiles levied by Section 72 of the Public Laws of 1921 and Section 78 of the Public Laws of 1923 and 1925, and paid by the plaintiff under protest. The actions have never been disposed of and are still pending.

State of North Carolina, in the Relation of the Commissioner of Revenue v. The American Tobacco Company

This action in the Superior Court of Wake County has been pending since 1940 and involves the question whether State income and franchise taxes may be measured, in part, by imported Turkish

Tobacco stored in customs warehouses in this State and awaiting manufacture. The Company contends that the imports clause of the federal constitution forbids the use, as a measure, of imported property in the original packages and still in customs custody.

CRIMINAL CASES

State v. Howard, 222 N. C. 291

The defendant was indicted in the Superior Court of Wake County on two separate bills of indictment, one bill charging him with embezzling property of the State of North Carolina while an officer and agent of the State and cashier in the North Carolina Department of Revenue, and the other bill charging him with aiding and abetting one C. W. Snead, another officer and employee of the State, in embezzling property of the State. The defendant was convicted on both charges and appealed to the Supreme Court. The Supreme Court found no error in connection with the trial in the lower court.

State v. Ward, 222 N. C. 316

The defendant, Robert L. Ward, Jr., was tried in the Superior Court of Wake County, North Carolina, on three bills of indictment charging embezzlement and aiding and abetting in the crime of embezzlement. The three cases were by consent consolidated for the purpose of trial and each bill considered as a separate count. From 1938 to 1941 the defendant was auditor and Chief of the Division of Accounts and Records in the Department of Revenue of the State of North Carolina. There was a verdict of guilty as to each count on which the defendant was tried and from the judgment pronounced on the verdict of the jury, the defendant appealed to the Supreme Court. After a careful examination of all the exceptions entered by the defendant in the lower court, the Supreme Court found no error of sufficient merit to justify a new trial.

State v. Pelley, 222 N. C. 684

The defendant, William Dudley Pelley, was convicted in the year 1935 in the Superior Court of Buncombe County on the charge of a violation of the Capital Issues Law of the State of North Carolina. He was given a suspended sentence and thereafter the suspended sentence was put into effect and the defendant appealed to the Supreme Court of North Carolina, where the action of the lower court was affirmed—*State v. Pelley, 221 N. C. 487*. Pending his appeal to the Supreme Court of North Carolina, the defendant was released on a bail bond in the sum of \$10,000.00 executed by the defendant, as principal, and Carrie Thrash Dorsell and George B. Fisher, as sureties. The bond was conditioned upon the appearance of the defendant at the next term of the Superior Court of Buncombe County to be held after the judgment of the Supreme Court of North Carolina was handed down and then and there to abide judgment

of the court. The defendant failed to appear as required by the bond and was called and failed to answer. A *sci fas* was issued and the sureties filed answer, contending that they had been relieved from liability on the bond, due to the fact that the defendant had been taken into custody by the United States Marshal for the Southern District of Indiana for removal to the United States District Court of the District of Columbia, upon an indictment charging certain federal offenses. Judgment absolute on the bond was entered in the court below and the sureties on the bond appealed to the Supreme Court assigning error. The judgment of the court below was affirmed by the Supreme Court.

State v. Lippard, 223 N. C. 167

The defendants, Carl Lippard and Paul Lippard, were indicted in the Superior Court of Mecklenburg County on the charge of a conspiracy to violate the laws of the State of North Carolina relating to intoxicating liquor. In the court below the defendants pleaded former jeopardy, contending that they had theretofore been tried for the offenses which were to be used as a basis for the establishment of the crime of conspiracy. The court below refused to allow the defendants' plea for dismissal based upon former convictions and double jeopardy and the defendants, after being convicted by the jury, excepted and appealed to the Supreme Court. The Supreme Court held that the charge of conspiracy to violate the law and the charge of the consummation of the conspiracy being an actual violation of the law are charges of separate offenses and that a conviction of one cannot be successfully pleaded as former jeopardy on an indictment for the other. No error was found in the trial below.

State v. Williams and Hendrix, 224 N. C. 183

A series of North Carolina decisions hold that a divorce decree obtained from a North Carolina defendant in a State in which only the plaintiff is domiciled and in which the defendant is not personally served with process and makes no appearance will be treated as void in North Carolina. It was thought that these decisions were sanctioned by the decision of the United States Supreme Court in *Haddock v. Haddock*, 201 U. S. 562, but the constitutionality of the North Carolina rule was challenged in *State v. Williams and Hendrix*. The defendants, convicted of bigamous cohabitation in Caldwell County, had obtained in Nevada divorces from their North Carolina spouses on service by publication, had married, and had lived together in North Carolina. Their contention that the Nevada divorce decrees were entitled to full faith and credit under Article IV, Section 1, of the United States Constitution, was rejected by the North Carolina Supreme Court in *State v. Williams and Hendrix*, 220 N. C. 445. A writ of *certiorari* was granted by the United States Supreme Court and the case was heard by that Court at the October Term, 1942. The United States Supreme Court overruled the decision of

Haddock v. Haddock, 201 U. S. 562, reversed the conviction of the defendants, and remanded the case for further proceedings, 317 U. S. 287. The Supreme Court of North Carolina remanded the case to the Superior Court of Caldwell County for a new trial, 223 N. C. 609. In this prosecution, the State proceeded upon the theory that the plaintiffs in the divorce actions had acquired no bona fide residences in Nevada. The jury accepted the State's contentions and again returned a verdict of guilty. The North Carolina Supreme Court affirmed the conviction. A writ of *certiorari* was granted by the United States Supreme Court and the case will be heard by that Court at the October Term, 1944.

State v. Gordon, 224 N. C. 304

The defendant, John Gordon, was tried in the Superior Court of Wake County on charges of violating certain provisions of the prohibition law. Whiskey had been delivered to a motor carrier in Maryland for delivery in South Carolina. The truck which was carrying the whiskey was found in the possession of the defendant with an automobile backed up to the rear thereof while the defendant was apparently in the act of transferring cases of whiskey from the truck to the car. In the trial, the judge instructed the jury that it was immaterial that the whiskey was an interstate shipment if they (the jury) should find beyond a reasonable doubt that the defendant took possession of it and had it in his possession for the purpose of sale in this county. The jury returned a verdict of guilty and the defendant appealed to the Supreme Court. The Supreme Court affirmed the conviction of the defendant, saying that a cargo of liquor started on its way as an interstate shipment may be diverted to unlawful purposes and the nature of the shipment does not license the one in possession to dispose of it at will in this State.

State v. Hall, 224 N. C. 314

The defendant, Bert Hall, was charged in the Recorder's Court of Cumberland County with unlawful possession and transportation of 323 cases of intoxicating liquor. To this charge he pleaded guilty, and judgment was thereupon rendered imposing sentence upon him, and also in accordance with the North Carolina statute, decreeing confiscation and forfeiture of the liquor. From this judgment there was no appeal. Subsequent to this conviction, Roadway Express Incorporated filed a petition and interplea in the cause in the Recorder's Court, alleging title to the 323 cases of liquor as bailee, and asked that immediate possession thereof be surrendered to it. The interpleader further alleged that it had no knowledge of any unlawful acts on the part of Hall; that Hall was not its employee; that it did not authorize Hall to maintain possession of the liquor except for the purpose of operating the truck and transporting the whiskey from Maryland to South Carolina, and that proper shipping papers were issued at the time of making the shipment. Judgment was entered in the Recorder's Court overruling the motion and interplea

of Roadway Express Incorporated, and confirming the disposition of the liquor as ordered in the original judgment in the criminal action. The petitioner appealed to the Superior Court. It was thereupon ordered that the judgment of the Recorder be overruled and that Roadway Express Incorporated, as bailee, was entitled to the immediate possession of the 323 cases of whiskey. To this order the State and the Cumberland County Alcoholic Beverage Control Board excepted and appealed. The Supreme Court reversed the judgment of the Superior Court, holding that where one who was in possession of seized liquor at the time he was arrested for unlawful acts with respect thereto pleads guilty to or is convicted of charges of unlawful possession and unlawful transportation of this liquor and thereupon personal judgment is rendered against him, the provisions of G. S. 18-6 are mandatory that the judgment also order the confiscation and forfeiture of the liquor so unlawfully possessed and transported. The court held further that when a cargo of intoxicating liquor, though started on its way as an interstate shipment, is diverted to unlawful purposes in violation of the law of the state in which it has come to rest, the initial character of the shipment does not clothe those in possession with immunity from prescribed penalties or oust the jurisdiction of the state courts, either as to person or property.

OPINIONS TO GOVERNOR

DOUBLE OFFICE HOLDING; CLERK TO RATIONING BOARD AND NOTARY PUBLIC

14 August, 1942.

I have your letter of August 11, 1942, in which you inquire whether Mr. Lew Williams, who states that he is an "Assistant" to the Forsyth Rationing and War Price Board, would be disqualified to hold the office of Notary Public by reason of the fact that he is holding a Federal office.

I am informed by the Office of Price Administration in Raleigh that technically there is no such position as "Assistant" to a rationing board. I assume, therefore, that Mr. Williams is a clerk to the board. Clerks to rationing boards do not have to exercise independent or official discretion with reference to matters that come before them. They act under instructions from the board and their acts are ratified by the board. Their work is primarily clerical in nature.

The test of whether a position constitutes a public office within the meaning of our constitutional prohibition against double office holding, as stated in *State v. Smith*, 145 N. C. 476, is whether the individual involved is delegated some of the sovereign functions of the government. Where a person is merely an employee and his duties are clerical only, I do not think he would be considered a public officer. I, therefore, advise that there is no constitutional obstacle to the appointment of clerks and other clerical employees of a rationing board to the position of Notary Public.

OFFICERS; DUAL OFFICE HOLDING; NOTARY PUBLIC—MEMBER OF HOME GUARD

22 September, 1942.

The constitutional provision against dual office holding, Article XIV, Section 7, excepts officers in the militia. Therefore, an officer in the Home Guard, which is a part of the State militia, would not be prevented thereby from at the same time acting as a Notary Public or holding any other office.

I am enclosing you copy of the opinion rendered by me to Mr. Leonadas Hux on the subject of double office holding as affecting commissioned officers in the United States Army, Navy and Marine Corps.

INLAND WATERWAY

15 October, 1942.

I have your letter of October 13, enclosing copy of a letter from Colonel W. S. Moore, District Engineer, Wilmington, North Carolina, requesting the State to provide a tract of land containing about 110 acres, located in Brunswick County about nine miles west of Southport, found to be necessary by the United States engineers in order

to remove shoals which might interfere with the movement of oil in barges from Florida to northern points.

He advises that an enlargement of the waterway from a channel of 8 feet deep and 75 feet wide to a channel of 12 feet deep and 90 feet wide was authorized by the River and Harbor Act of August 26, 1937, in which it was provided that local interests should furnish free of cost to the United States necessary rights-of-way and spoil disposal areas for new work and subsequent maintenance. You are requested to advise whether or not the State may be expected to furnish to the United States, without cost, the additional right-of-way now required.

Chapter 2 of the Public Laws of 1931, entitled "An Act to Provide a Right-of-way for the United States Government for the Inland Waterway from the Cape Fear River at Southport to the North Carolina-South Carolina Line," is the only authority which the State has to provide the right-of-way in this territory. This Act recites the Act of Congress approved July 3, 1930, authorizing the construction of an Intracoastal Waterway from the Cape Fear River at Southport to and beyond the North Carolina-South Carolina State Line, in accordance with a report submitted to the 71st Congress, First Session, providing for a right-of-way of specified width, depending upon the elevation of the land above mean low water. The preamble of this Act recited that the State desired to accomplish the condition imposed upon local interests and furnish the right-of-way for the waterway as provided in the report of the engineers.

No action has been taken by our Legislature since the Act of Congress of August 26, 1937, and I am unable to find any authority given by the Legislature of this State to provide any additional right-of-way for the United States, which is found to be necessary by reason of conditions referred to in the letter from Colonel W. S. Moore. The appropriation provided in Chapter 2 of the Public Laws of 1931 has been completely expended, and, in addition thereto, some funds were provided from the Contingency and Emergency Fund. I, therefore, regret to state that I am unable to advise you of any authority which would permit the State to provide the Federal Government with the additional land which is now needed.

NOTARIES; ELIGIBILITY FOR APPOINTMENT; RESIDENCE REQUIREMENTS

21 October, 1942.

You inquire as to whether a person who resides in one county in the State is entitled to receive a commission as a notary public in another county in the State in which such person is temporarily employed.

Section 3172 of Michie's North Carolina Code of 1939 Annotated provides that the Governor may, from time to time, at his discretion, appoint one or more fit persons in every county to act as notaries public and shall issue to each a commission.

Section 3173 provides that upon exhibiting their commission to the Clerk of the Superior Court in the county in which they are to

act, the notaries shall be duly qualified by taking before said Clerk an oath of office and the oaths prescribed for officers. It further provides that a certificate of the commission shall be deposited with the Clerk and filed among the records and that the Clerk shall note on his minutes the qualifications of the notary public.

Section 3176 provides that notaries have full power and authority to perform the functions of their office in any and all counties of the State and full faith and credit shall be given to any of their official acts wheresoever the same shall be made and done.

The Supreme Court of North Carolina, in the case of *Harris v. Watson*, 201 N. C. 661, holds that the office of notary public is a public office within the meaning of Article XIV, Section 7, of the Constitution, which prohibits double office holding.

Article 6, Section 7, of the Constitution of North Carolina, provides that every voter in North Carolina, except as in Article 6 disqualified, shall be eligible to public office.

Section 25 of the Election Laws of North Carolina, being Section 5937 of Michie's North Carolina Code of 1939 Annotated, provides that, subject to certain exceptions contained in Section 5936, every person who has been naturalized and who shall have resided in the State of North Carolina for one year and in the precinct, ward, or other election district in which he offers to vote four months next preceding the election shall, if otherwise qualified, be a qualified elector in the precinct or ward or township in which he resides.

Although it is my thought that it might be advisable to confine the appointment of notaries public to the county in which they actually reside, I am unable to find anything in the statutes which, to my mind, would prevent the Governor of North Carolina from appointing a person a notary public in a county in which such person temporarily resides and intends to act, although the person's actual residence is in another county in the State.

PURCHASE AND CONTRACT; SALE OF TYPEWRITERS BELONGING TO STATE

8 December, 1942.

I acknowledge receipt of your letter of the 7th inst., in which you state that the Army and Navy are in immediate need of six hundred thousand typewriters, and that the typewriter manufacturers have converted their factories to the production of other more essential war materials, necessitating the War Production Board demanding that typewriters be supplied by all business firms, State, county and local governments from those that are now in their possession.

You inquire whether or not the State purchasing agency may sell to the Federal Government without competitive bidding when the funds so received are placed in a sinking fund, with the understanding that when the war is over, additional money would be added in order that new typewriters may be purchased.

While it is my understanding that the Department of Purchase and Contract requires competitive bidding for the sale of any State

owned property, I find no statute specifically requiring that competitive bidding be had before typewriters and other articles of personal property can be sold. I am of the opinion that under the present national emergency, the State may sell to the Federal Government typewriters and similar articles of personal property without competitive bidding.

CRIMINAL LAW; CONTROL AND TREATMENT OF VENEREAL DISEASES;
MAXIMUM SENTENCE FOR FAILURE TO TAKE TREATMENTS

26 February, 1943.

On yesterday Associate Justice Barnhill, of the Supreme Court of North Carolina, heard a petition for a writ of habeas corpus filed by one Ruby Ingle, who was tried in the police court of the City of Asheville on the 11th day of January on a charge that she wilfully failed, neglected and refused to take treatment for venereal disease, as provided by Section 3, Chapter 206, of the Public Laws of 1919. She was given a sentence of eight months in the common jail of Buncombe County to be worked under the supervision of the State Highway and Public Works Commission and was committed to the State Prison on January 18, 1943. At the time of the hearing, she had served over thirty days of her sentence.

Section 7198 of Michie's North Carolina Code of 1939 Annotated, which is Section 8, of Chapter 206, of the Public Laws of 1919, provides:

"Any person who shall violate any of the provisions of this part of this article or any lawful rule or regulation made by the North Carolina state board of health pursuant to the authority herein granted, or who shall fail or refuse to obey any lawful order issued by any state, county, or municipal health officer, pursuant to the authority granted in this article, shall be deemed guilty of a misdemeanor, and shall be punished by a fine of not less than twenty-five dollars, nor more than fifty dollars, or by imprisonment for not more than thirty days."

Justice Barnhill, on the showing that the prisoner had served more than thirty days, granted the writ of habeas corpus and ordered the prison authorities of the State of North Carolina to release and discharge the prisoner. I am informed that there are several other women prisoners now confined in the Women's Division of the State's Prison who have been sentenced to be confined for a longer period than thirty days solely for failure to take the treatment for venereal disease. Some of these prisoners are in need of further treatment and some, I am informed, do not need further treatment for venereal disease.

Under the provisions of Section 7198, above referred to, the maximum sentence which may be imposed upon a defendant is thirty days imprisonment and those persons who are now in the Women's Division of the State Prison and who have served more than thirty days on a sentence pronounced under the provisions of this Section are being illegally detained, unless they require further treatment for venereal disease.

Under the provisions of Section 3, of Chapter 257, of the Public Laws of 1935, which appears in Michie's North Carolina Code of 1939 Annotated as Section 7716, the State Highway and Public Works Commission is authorized to provide within the bounds of Central Prison at Raleigh, or elsewhere in the State, suitable quarters for women prisoners and arrange for work suitable to their capacity, and the several courts of the State are authorized to assign women convicted of offenses, whether felonies or misdemeanors, to such quarters so provided, but no woman prisoner is to be assigned to work under the supervision of the State Highway and Public Works Commission whose term of imprisonment is less than six months or who is under eighteen years of age.

Therefore, the women prisoners who were sentenced under the provisions of Section 7198 of Michie's Code should never have been assigned to work under the supervision of the State Highway and Public Works Commission, but should have been retained in the common jail of the county in which they were tried. The prisoners who have been sentenced under the provisions of Section 7198, who need further treatment but who have served a longer period than thirty days, should not be discharged but should be held for further treatment. It is my thought that these prisoners should be returned to the counties from which they were sentenced so that the counties may hold them for further treatment.

HOSPITALS FOR THE INSANE; CONVICTS BECOMING INSANE; COMMITMENT
TO STATE HOSPITAL; RELEASE OR TRANSFER

24 March, 1943.

I have checked the file you sent me relative to the case of one Rex Griggs who, while serving a sentence of from four to seven years at State's Prison, was admitted to the Criminal Insane Department of the State Hospital at Raleigh.

It seems that Griggs' sentence expired on September 30, 1942, and that his mother desires that he be transferred to the State Hospital at Morganton. On December 2, 1942, in reply to an inquiry from Dr. J. F. Owen, Superintendent of State Hospital at Raleigh, I expressed the opinion that Dr. Owen would not be authorized to order the transfer of Griggs to the State Hospital at Morganton. I am enclosing herewith a copy of my letter to Dr. Owen.

Upon receipt of your file, I rechecked the statutes relating to the various hospitals for the insane and I find that, under the provisions of Section 6163 of Michie's North Carolina Code of 1939 Annotated, it is provided:

"The Board of Directors are authorized to make such rules and regulations as in their discretion may seem best for the transfer of patients from one state hospital for the insane to another state hospital for the insane; and they are further authorized to transfer from one hospital for the insane to another hospital for the insane any funds appropriated for permanent improvement or maintenance if in their discretion and judgment it may become advisable or necessary."

It will be noted that at the time of the enactment of this particular Section one Board of Directors had charge of both the State Hospital at Raleigh and the State Hospital at Morganton. Thereafter, the law was changed so as to provide for a separate board for each institution and Section 6163 might have been, by implication at least, rendered ineffective. However, this particular statute was carried forward in the new Code and as the last General Assembly provided for a central board for the various State Hospitals, this board might, under the authority contained in Section 6163, provide for the transfer of patients from one hospital to another, provided the persons to be transferred would not be considered in the class of the dangerous insane.

Of course, I am very much in sympathy with Mrs. Griggs in trying to do what she thinks is the best for the welfare of her son.

UNIFORM DRIVERS LICENSE ACT; SUSPENSION, REVOCATION AND
RESTORATION OF LICENSE

April 9, 1943.

You inquire as to the authority of the Governor to reinstate or issue a new license to a person whose driver's or chauffeur's license has been revoked by the Motor Vehicle Department after conviction in court has become final for operating a motor vehicle upon the streets and highways of the State under the influence of intoxicating liquors. You also inquire if such person is apprehended for operating his car during the period of revocation and has his license revoked for an additional period of time, whether or not the Governor may reinstate his driver's license at the end of the first revocation period but before the end of the period of the additional twelve months' revocation.

Section 2621(161) of the Consolidated Statutes provides:

"The Department shall forthwith revoke the license of any operator or chauffeur upon receiving a record of such operator's or chauffeur's conviction for any of the following offenses when such conviction has become final:

"2. Driving a motor vehicle while under the influence of intoxicating liquor or a narcotic drug.

"(b) The Department, upon receiving a record of the conviction of any person upon a charge of operating a motor vehicle while the license of such person is suspended or revoked, shall immediately extend the period of such first suspension or revocation for an additional like period."

Section 2621(162) of the Consolidated Statutes provides:

"The Department shall not suspend a license for a period of more than one year and upon revoking a license shall not in any event grant application for a new license until the expiration of one year."

It can thus be seen that it is mandatory upon the Department to revoke the license of a person who has been convicted for driving under the influence of intoxicating liquors, and it cannot grant application for a new license until the expiration of one year.

It will also be seen that under Paragraph (b) of Section 2621(161) that upon a person's being convicted for operating a motor vehicle during the period of the revocation of his license, shall immediately have his license revoked and extend the period of such first suspension or revocation for an additional like period.

The nearest approach to the Governor's authority to reinstate the license of a person who has been convicted of operating a motor vehicle under the influence of intoxicating liquors or has had his license revoked for operating the same during the period of the first revocation is under Article III, Section 6, of the Constitution which gives to the Governor certain pardoning powers. The Constitution gives the Governor power to pardon criminals and commute sentences imposed upon them which have been imposed incidental to the conviction of crime. The decisions uniformly hold that the revocation or suspension of a license under the terms of the Uniform Drivers License Act is not a punishment for crime. The State has power to grant operators licenses upon reasonable conditions, or to revoke or suspend such licenses upon a violation of these conditions. The law requiring or authorizing the Motor Vehicle Department to revoke a driver's license when the driver has been convicted of a violation of the provisions of the Act, does not impose a penalty, but on the contrary, it is entirely disconnected with any punishment or burden to be imposed upon a convicted person because of the crime he has committed. It is purely a police measure under authority of the police power of the State and for the protection of the public, and the fact that the violation of these conditions may also be a criminal offense is not material.

See the case of *Commonwealth v. Funk*, 186 Atlantic Reporter 65; *People v. Cohen*, 217 N. Y. S. 726-728 and *Hedrick v. Maryland*, 235 U. S. 610-632.

I am, therefore, of the opinion that the Governor of the State of North Carolina does not have the statutory power or the pardoning power granted to him by the Constitution to restore a driver's or chauffeur's license to a person who has been convicted for the violation of a provision of the Uniform Drivers License Act, and who has had his license revoked by the Motor Vehicle Department as directed under Section 2621(161) of the Consolidated Statutes.

EXTRADITION; WAIVER; EXPENSE OF RETURNING FUGITIVE

14 April, 1943.

The correspondence and bill covering the expense of returning one Taylor Harris to Guilford County from Centerville, Alabama, has been submitted by you to this office for consideration. You desire my opinion as to whether the State of North Carolina would be justified in paying the expense of returning Taylor Harris to Guilford County for trial.

It appears from the correspondence that no application was made to you as Governor requesting the extradition of Harris. It follows that no demand was made by you on the Governor of Alabama for the return of this person. This identical question was raised by Hon-

orable H. L. Koontz, Solicitor of the Twelfth District, on February 28, 1940, and in answer to the request of Mr. Koontz for an opinion this office wrote as follows:

"You state that the Police Department of the City of Greensboro has sent you an itemized statement of a bill for expenses incurred in returning to this State a fugitive from justice, a felon, who was returned by the Police Department of Greensboro from Florida, without going through the formality of an extradition proceeding.

"This identical question has been the subject of consideration by this Office before. On the 5th of April 1937, the then Attorney General Seawell rendered an advisory opinion to Sheriff Clark of Bladen County, wherein he held that 'the State will not pay expenses even in such a case unless the requisition is demanded by the Governor of this State and an agent named to transport the prisoner. In cases other than felonies, the expenses must be paid by the county.'

"And, again on the 10th of July 1935, in a similar situation, this office advised Mr. B. L. Fentress, County Attorney, of Greensboro, as follows:

"'It is the opinion of this office that Consolidated Statutes, Section 4556, applies only where the Governor of this State has actually made a requisition on the Governor of another state for a fugitive from justice. We are of the opinion, also, that 4556(v) should be taken into conjunction with 4556, and unless actual requisition has been made by the Governor, that the costs of returning a prisoner to this State, who has waived extradition, should be borne by the county.'

"The same conclusion was reached in another similar case in an advisory opinion addressed to Mr. Charles Hughes, County Attorney at Newland, North Carolina, on the 4th of December, 1935."

The conclusion reached in the letter to Mr. Koontz is still the opinion of this Office.

DOUBLE OFFICE HOLDING; NOTARY PUBLIC AND MEMBER OF COUNTY
BOARD OF ELECTIONS

1 July, 1943.

You state in your letter of June 30 that it appears from an application filed by Mr. Fred R. Seeley of Beaufort, North Carolina, as a Notary Public, that Mr. Seeley is now a member of the Board of Elections of Carteret County. You desire to know whether, in my opinion, the membership of Mr. Seeley on the County Board of Elections would interfere with his appointment as a Notary Public.

Article XIV, Section 7, of the Constitution of North Carolina, provides:

"No person who shall hold any office or place of trust or profit under the United States, or any department thereof, or under this State, or under any other state or government, shall hold or exercise any other office or place of trust or profit under the authority of this State, or be eligible to a seat in either house of the General Assembly; Provided, that nothing herein contained shall extend to officers in the militia, justices of the peace, commissioners of public charities, or commissioners for special purposes."

This office has held on numerous occasions that a Notary Public and membership on the County Board of Elections are both offices within the meaning of this Constitutional provision.

I would recommend that Mr. Seeley resign as a member of the County Board of Elections before qualifying as a Notary Public. However, our Supreme Court has held, in the case of *Whitehead v. Pittman*, 165 N. C. 89, that the acceptance of a second office by one holding a public office operates *ipso facto* to vacate the first. In the case of *Barnhill v. Thompson*, 122 N. C. 493, one of the cases on which the opinion in the above case was based, it was held that the officer has the right to elect which office he will retain and that his election is deemed to have been made when he accepts and qualifies for the second office. The acceptance of the second office is, of itself, a resignation of the first.

APPROPRIATIONS; BOARD OF CHARITIES AND PUBLIC WELFARE; SURPLUS
COMMODITY DIVISION; 1943-1944

3 August, 1943.

I received your letter of August 2, with enclosures, having reference to the appropriations made by Chapter 530 of the Session Laws of 1943, page 593, Item 12, for the year 1943-1944, of a total of \$226,470.00 to the Board of Charities and Public Welfare, and particularly with reference to the appropriation included therein of \$54,830.00, under the heading of V-8 in the Budget Report, entitled "Surplus Commodity Division."

I have very carefully considered the question presented in this correspondence, as to whether or not some part of this appropriation of \$54,830.00 could be used by the Board of Charities and Public Welfare in cooperation with the State Department of Public Instruction in carrying out the lunch room program made possible by the availability of an appropriation made by Congress of fifty million dollars, which includes approximately \$1,250,000.00 estimated as North Carolina's pro rata share to be used to reimburse the lunch room program sponsors for local purchases of food from farmers and food merchants. I understand also, in addition to this program, that the Federal Government will make available for distribution to the school lunch rooms surplus commodities of the same nature and character as was in contemplation at the time the General Assembly of 1943 enacted the Appropriations Act.

After consultation with Mr. R. G. Deyton, Assistant Director of the Budget, I am of the opinion that the appropriation of \$54,830.00 referred to, to the Board of Charities and Public Welfare could be legally employed to provide the funds necessary for the operation of the lunch room program, to be expended by the State Board of Charities and Public Welfare in cooperation with the State Department of Public Instruction and under a budget approved by the Budget Bureau. In my opinion, this expenditure will substantially carry out, in part, the program contemplated by the General Assembly in making the above referred to appropriation.

EXTRADITION; ARREST

14 August, 1943.

I have before me a letter to you from Mr. B. L. Lytton, of B. L. Lytton & Associates of Knoxville, Tennessee, under date of August 10, complaining on account of the failure of the Sheriff of Gaston County to arrest J. Caswell Taylor on a warrant charging a felony, issued in Knoxville, Tennessee, and sent by the sheriff of that county to the Sheriff of Gaston County.

Under our extradition law, Michie's Code 4556(13), it is provided that a warrant can be issued for the arrest of a person in this State tried for the commission of a crime in another state, upon affidavit being made charging the commission of such crime and, when arrested, held to await extradition (Michie's Code 4556(15)). An arrest may also be made without a warrant for an offense punishable by death or imprisonment for a term exceeding one year, but complaint must be made under oath, setting forth the offense (Michie's Code 4556(14)).

C. S. 4550 authorizes a warrant to be issued for the arrest of a person who is a fugitive who is charged with a capital crime and certain felonies.

The Sheriff of Gaston County would not be authorized to arrest the defendant on a warrant issued by a court in Tennessee, as the issuing court has no authority to direct a sheriff of a county in this State to make the arrest. I, of course, am not informed as to why the Sheriff of Gaston County has not acknowledged the correspondence referred to in the letter from Mr. Lytton.

MILITARY PERSONNEL; JURISDICTION OF STATE COURTS

14 August, 1943.

I have before me a letter to you from Major General William Bryden, under date of August 2, 1943, in which he requests you to make a statement of policy with reference to the jurisdiction of the State courts over military personnel and the method of handling arrests made by military personnel for violations of State and military laws.

I have considered very carefully General Bryden's letter, together with the statement of policy he has requested you to sign.

I am attaching hereto a copy of a letter from this office, under date of July 22, 1942, written to Honorable W. Y. Bickett, Solicitor, on the subject of General Bryden's letter. You will observe from this copy that a conclusion was reached by me in accordance with the position taken by General Bryden as to the respective authority of the civil and military authorities. I believe, therefore, that you might properly make the statement of policy as to these matters requested by General Bryden, but I do think that in all cases the necessary formalities should be gone through with so that the military personnel arrested would not be discharged from arrest except upon a proper order of the judge of the court which has jurisdiction to try the case. If the offense committed is a felony and the case is pending in the Superior Court, it is my opinion that a formal application in writing should be made by the commanding officer of the person arrested, asking for the sur-

render of the prisoner to be properly dealt with by the military authorities. Upon such request being made, it would be in order, if the judge concurred in the views expressed by this office, to make an order directing the surrender of the prisoner to the commanding officer of the person arrested.

In misdemeanor cases, it would seem proper that an order should be made by the court having jurisdiction, of a similar character in order that military personnel arrested would not be informally discharged from arrest without necessary and proper record being made. It is my understanding that the commanding officers in the various camps in the State have approved proceedings for applying the suggestions made as to the manner of securing the release of military personnel from our State authorities. I believe that any statement of policy which you should promulgate should carry with it the requirement above suggested.

MILITIA; HOME GUARD; WINSTON-SALEM; GREENSBORO; HIGH POINT

7 December, 1943.

In a conference held in your office recently with some of the municipal officials of the Cities of Winston-Salem, Greensboro and High Point, and officers of the Home Guard located in these Cities, the status of these organizations was considered in view of Sections 6894 and 6895(a) of the Consolidated Statutes, which read as follows:

Section 6894. "If any person shall organize a military company, or drill or parade under arms as a military body except under the militia laws and regulations of the state, or shall exercise or attempt to exercise the power or authority of a military officer in this state, without holding a commission from the governor, he shall be guilty of a misdemeanor."

Section 6895(a). "It shall be unlawful for any person not an officer or enlisted man in the United States army, navy, or marine corps, to wear the duly prescribed uniform of the United States army, navy, or marine corps, or any distinctive part of such uniform, or a uniform any part of which is similar to a distinctive part of the duly prescribed uniform of the United States army, navy, or marine corps. . . ."

I am enclosing herewith a copy of a letter from Capt. D. D. Edmunds of the Winston-Salem unit to Mayor Garland of Gastonia, which I assume properly describes the organization of the several Home Guard units.

In this conference it was urged by the municipal officials and officers of the Home Guard that their units did not constitute a military organization within the purview of the above quoted sections, but were in the nature of organizations of auxiliary policemen named by the mayor or governing body of the interested cities. I was requested to study the city charters as to any provisions authorizing the naming of auxiliary policemen.

The city charter of the City of Greensboro, as amended by Chapter 230 of the Private Laws of 1927, contains the following provision:

" . . . Provided, that for any emergency the city manager may appoint *temporary* police officers without examination. . . ."

The Winston-Salem city charter, as amended by Chapter 232 of the Private Laws of 1927, contains the following:

"Sec. 23. . . . In times of emergency the mayor may appoint *temporary* additional policemen for such time as shall appear necessary, *not exceeding one week*, who shall take the same oath and be subject to the same control as regular policemen. . . ."

I find no charter provision authorizing the City of High Point to name special auxiliary policemen.

It will be observed that each one of these charter provisions merely authorizes the appointing official to appoint temporary police, and in the case of Winston-Salem, this appointment is limited to one week.

In the case of *Wilson v. Mooresville*, 222 N. C. 283, our Supreme Court said:

"Though the town may make rules for their regulation, such policemen as may be appointed are vested with the same powers and duties as peace officers, and are circumscribed by, and are subject to the same limitations upon such powers and duties. . . . It has no authority to enlarge or to restrict their powers and duties as peace officers conferred upon them by the Legislature."

The jurisdiction of the temporary police authorized under the quoted sections of the charters of the interested cities is limited to the corporate limits of the respective city or one mile radius beyond. Such police officers would not have authority to make arrests or otherwise serve as policemen beyond such territory, and making an arrest without a warrant outside of such territory would constitute an assault. If such police officer is injured while in the performance of his duties as police officer beyond his jurisdiction, he would not be entitled to the benefits of the Workmen's Compensation Act. *Wilson v. Mooresville*, 222 N. C. 283.

LEAVE OF ABSENCE; SOLICITOR; ENTERING SERVICE WITHOUT MILITARY COMMISSION

28 December, 1943.

I have your letter of December 27, in which you advise that one of the Solicitors of the State will shortly be inducted into Military Service under the Selective Service System, and the Solicitor entering the Service would like to have a leave of absence and have an acting solicitor appointed in his place. You advise that he is not being commissioned as an Officer, but will enter the Army as a Private. You submit the following questions:

1. Is it within my power to grant the requested leave of absence or is it necessary to consider that the induction of the solicitor into Military Service will terminate his tenure of the office of solicitor making it necessary for me to appoint a new solicitor instead of an acting solicitor for the period covered by leave of absence?

2. In the event of my appointment of either a new solicitor or an acting solicitor, is such an appointment for the unexpired term of office or is it required to be only until the next general election?

As the Solicitor entering the Military Service will not be commissioned as an Officer but will enter the Army as a Private, I am

of the opinion that, under authority of Chapter 121 of the Public Laws of 1941, you would have the authority to grant the leave of absence on the condition that this official will not receive any salary during the period of the leave of absence, and, under the statute, no leave of absence granted will operate to extend the term of office of the official beyond the period for which he was elected. This statute provides that, if you deem it necessary, you may appoint any citizen of the State, without regard to residence or district, as acting official or substitute for the period of the leave of absence, such appointee to have all the authority, duties, perquisites, and emoluments of his principal.

As the Solicitor mentioned will not accept a commission, there would be, in my opinion, no dual office holding within the prohibition of Article 14, Section 7 of the State Constitution. The public policy of the State has been declared in the 1941 statute, having this identical problem in mind, and the law above referred to was passed for the specific purpose of authorizing you as Governor to grant the leave of absence for Military Service of "any elective or appointive State official."

I therefore think that you could properly grant the leave of absence upon the application of the Solicitor for the duration of the existing state of war, with the proviso that the leave of absence would not extend beyond the present term of office for which the Solicitor has been elected. This, I believe, answers both the questions you submitted.

LEAVE OF ABSENCE; COMPTROLLER, STATE BOARD OF EDUCATION; DOUBLE
OFFICE HOLDING; ACCEPTANCE OF A COMMISSION AS CAPTAIN
IN THE UNITED STATES ARMY

29 December, 1943.

I have your letter of December 27, in which you advise that Honorable Nathan Yelton, Comptroller of the State Board of Education, has accepted a commission as Captain in the United States Army and has been assigned for special work with the Allied Military Governments, having entered upon his duties as such on December 27, 1943. You state that this presents the question as to whether or not Captain Yelton can be granted a leave of absence, and also, whether or not it will be possible for the State Board of Education, with the approval of the Governor, to name an Acting Comptroller, or whether his acceptance of a commission terminates his tenure of office, making it necessary to appoint or elect his successor for the unexpired portion of the term of his appointment.

I have today conferred with you about the subject of your letter and advised you that, in my opinion, no satisfactory answer could be secured to this question except through the medium of the opinion of the Chief Justice and Associate Justices of the Supreme Court of North Carolina. The identical question has not been presented under the circumstances of this case to our Court. I am enclosing herewith a copy of the memorandum on this subject from which you will observe that some of the Courts of other states have held that

the acceptance of a commission of the character accepted by Captain Yelton would prevent him from holding the office under the authority of the State, while in other jurisdictions, the Courts have reached a contrary conclusion.

The nearest approach to this question in our State is found in the matter of J. G. Martin, 60 N. C. 153, in which, at the request of Governor Zebulon B. Vance, an opinion of the Justices was rendered, in which it was held that the acceptance of the office of Brigadier General under the Confederate States vacated the office of Adjutant General of North Carolina held by the person accepting the Confederate States' office. This case, however, was decided on the basis of incompatibility of the two offices, although the constitutional provision then existing was substantially similar to Article IV, Section 7 of our Constitution.

On account of the great importance and emergency of this question, I feel confident that the Chief Justice and Associate Justices of the Supreme Court, at your request, would be willing to render you their advisory opinion, and I recommend this course.

JUDGES OF SUPERIOR COURT; COMMISSIONS TO JUDGES; AUTHORITY TO
ACT WITHIN A DISTRICT OR A COUNTY

6 January, 1944.

I have your letter of January 4, 1944, with the letter from Honorable Leo Carr.

The case to which Judge Carr referred is *Shepard v. Leonard*, 223 N. C. 110. In that case, under an agreement of exchange with Honorable Q. K. Nimocks, Jr., the Judge regularly holding the courts of the Seventh Judicial District, Honorable Hubert E. Olive was commissioned "to hold the said court of the County of Wake: second week regular civil term, January 18, in the Seventh Judicial District." Under the above commission, the Court held that Judge Olive was without authority to sign an order in a civil action pending in Franklin County although Franklin County is within the same judicial district. At page 113 of *Shepard v. Leonard*, *supra*, Barnhill, J., observes:

"While under the constitutional provision the power and authority of special judges is or may be that of regular judges of the Superior Court, these judicial powers are to be exercised by special judges only 'in the courts which they are so appointed to hold.' The authority vested in the General Assembly to provide for the appointment of special judges and to define their jurisdiction is subject to this definite limitation and the General Assembly is without power to grant jurisdiction to special judges in excess thereof. *Greene v. Stadiem*, 197 N. C. 472, 150 S. E. 18; *Reid v. Reid*, *supra*; *Ipock v. Bank*, 206 N. C. 791, 175 S. E. 127.

"Speaking to the subject in *Ipock v. Bank*, *supra*, Brogden, J., says: 'Therefore, it is manifest that the power of special and emergency judges is defined and bounded by the words "in the courts which they are so appointed to hold".'

"Civil actions pending on the civil issue docket of a county are always subject to motion in the cause. These motions may be made before the judge at term. In many instances they may be

made out of term. When made at term the judge presiding, whether regular or special, has jurisdiction. To this extent Sec. 5, Ch. 51, Public Laws 1941, has full constitutional sanction.

"However, the Constitution, Art. IV, Sec. 11, does not confer or authorize the Legislature to confer any 'in chambers' or 'vacation' jurisdiction upon special judges, assigned to hold a designated term of court.

"It may be said that a regular judge holding the courts of the district has general jurisdiction of all 'in chambers' matters arising in the district. Why then is not this jurisdiction conferred on a special judge by the statute within the limitations of the Constitution?

"The general 'vacation' or 'in chambers' jurisdiction of a regular judges arises out of his general authority. Usually it may be exercised anywhere in the district and it is never dependent upon and does not arise out of the fact that he is at the time presiding over a designated term of court or in a particular county. As to him, it is limited, ordinarily, to the district to which he is assigned by statute. It may not be exercised even within the district of his residence except when specially authorized by statute. *Ward v. Agrillo*, 194 N. C. 321, 139 S. E. 451; *Howard v. Coach Co.*, 211 N. C. 329, 190 S. E. 478.

"Under the statute, Ch. 51, Public Laws 1941, enacted pursuant to Art. IV, Sec. 11, of the Constitution, a special judge, during the term of the court he has been assigned to hold, has full and complete jurisdiction over all actions and proceedings on the dockets of that court and may act in respect thereto with the same authority and to the same extent as a regular judge holding the court under statutory assignment. This includes the right to hear and decide any and all motions made in causes pending on the dockets and to grant any and all proper orders in respect thereto. Once having acquired jurisdiction at term he, by consent, may hear the matter out of term *nunc pro tunc*. *Edmundson v. Edmundson*, 222 N. C. 181.

"On the other hand, he has no 'vacation' jurisdiction and no jurisdiction in any cause pending in any other county either within or without the same judicial district. Any attempt by the Legislature to confer such jurisdiction goes beyond the limitations 'in the courts which they are so appointed to hold' and is without constitutional sanction."

Sometime ago, in response to an inquiry by Honorable C. W. Tillett of Charlotte, concerning this same case, a form was prepared in this office for a commission to a special judge which would confer authority on the special judge so commissioned to act at any place within the district to the same extent as the regular judge assigned to hold the courts of said district. Of course, the special judge would have such authority only during the period for which his commission authorizes him to act. In case the form which was left in your office has been misplaced, I am enclosing another.

May I call your attention to the fact that this new form of commission should be used only when the special judge so commissioned is to hold the *only* term of Superior Court in the district. The use of this form would oust all judges, other than the special judge commissioned, of jurisdiction within the district. If there are two terms of court in the same district, the "county" form of commission should be used.

CRIMINAL PROCEDURE; EXTRADITION; COSTS AND EXPENSES; SAM
McKINNEY; MITCHELL COUNTY

17 December, 1943.

Some time ago, the county attorney of Mitchell County wrote this office in regard to the liability of Mitchell County for certain expenses alleged to have been incurred by the sheriff of Mitchell County in returning one Sam McKinney from the State of Idaho to Mitchell County, North Carolina, for trial for breaking and entering and larceny. I have forwarded you copy of my reply to the county attorney of Mitchell County.

In attempting to arrive at the proper conclusion as to the liability of Mitchell County, I reviewed the file relative to the extradition of McKinney. I find certain complaints in the file relative to the return of McKinney to this State and a letter of recent date complaining that he has not been given the opportunity to give bond pending his trial. Although there might be some doubt as to the advisability of bringing McKinney back to the State of North Carolina for trial, I cannot believe that he is being prevented from giving bond if he is in position to do so. Any judge of the superior court would fix bail for McKinney if he would apply for a writ of habeas corpus.

I note that the sheriff of Mitchell County has already been paid the sum of \$328.40 for returning McKinney to this State and that he also claims that he is entitled to receive certain additional compensation, including \$3.00 per day during the period spent in making the trip to and from the State of Idaho. The extradition statute provides for the payment of the actual traveling and subsistence costs of the agent, together with such legal fees as were paid to the officers or the State on whose governor the requisition is made. The statute further provides that the officer entitled to these expenses shall itemize the same and verify them by his oath for presentation to the governor.

Under the provisions of this statute, the sheriff of Mitchell County would not be entitled to any per diem compensation covering the period spent in the trip to the State of Idaho. As to what would be considered legal fees paid to the officers of the state on whose governor the requisition is made, this would, to my mind, depend on the laws of the state on whose governor the demand is made and, in case of doubt, it would seem to me to be advisable to require a certificate or opinion from the attorney general of the state on which the demand is made to the effect that the fees are legal fees under the laws of such state. I am unable to determine from the file or from the letter of the county attorney of Mitchell County whether the items enumerated would be considered legal fees under the laws of the State of Idaho.

EXTRADITION; WAIVER; EXPENSE OF RETURNING FUGITIVE;
STATE V. JAMES WILLIAMS

11 February, 1944.

You submit to this office the file in the case of State v. Williams, and request my opinion as to whether the expense of Williams' return to the State of North Carolina from the State of Virginia should be paid by the State.

It appears from the file that the demand directed to the Governor of the State of Virginia was signed on the 27th day of January, 1944, and that at the time the demand was issued the agent named therein was already en route to the State of Virginia for the purpose of returning the fugitive. It also appears from the file that Williams had actually waived extradition prior to the time the demand on the Governor of Virginia was signed. I assume that at the time the demand was signed this information had not come to your attention.

Section 15-78 of the General Statutes of North Carolina provides that when the crime shall be a felony the expense shall be paid out of the State Treasury on the certificate of the Governor and warrant of the Auditor and in all other cases they shall be paid out of the county treasury in the county where the crime is alleged to have been committed. This office has heretofore rendered advisory opinions to the effect that the State, even in felony cases, will not pay expenses unless the requisition is demanded by the Governor of this State and an agent named to transport the prisoner. It also appears to me that from a practical standpoint the agent named in the demand should not go to the State on which the demand is made until action has been taken by the Governor of the State on which the demand is made, and that in the future it should be made clear to the agents named in the demands that the State will not be liable for any expenses incurred by the agents in the way of travel and subsistence costs incurred prior to the date action is taken by the Governor of the State on which the demand is made.

In the instant case I am satisfied that if it had appeared at the time the demand was issued that Williams had already waived extradition, no demand would have been made and, in that case, the State would not have been liable for the expenses incurred in his return to this State. However, as in this case the requisition was actually demanded by the Governor of this State and an agent named to return the fugitive to this State, I am of the opinion that the actual traveling and subsistence costs of the agent should be paid. I wish to call to your attention that Section 15-78 of the General Statutes of North Carolina provides that the officer entitled to the expenses shall itemize the same and verify them by his oath for presentation to the Governor of the State. The bill rendered by the agent in this particular case does not comply with these statutory provisions.

ALIENS; NATURALIZATION; TERMS OF COURT

18 February, 1944.

I have your letter of February 17, attaching thereto a letter to you from Mr. James W. Butterfield, District Director, Baltimore District, Immigration and Naturalization Service of the United States Department of Justice, with reference to the naturalization of alien members of the armed forces of our country. In the fourth paragraph of this letter, to which you direct attention, Mr. Butterfield requests that you sign a blanket order authorizing judges of the courts exercising naturalization jurisdiction in this State to hold naturalization hearings under Section 701 of the Nationality Act of 1940 (8

U.S.C., Section 1001; 56 Stat. 182), whenever such judges may deem it fit and necessary to do so.

The section referred to grants exclusive jurisdiction to naturalize persons as citizens of the United States upon District Courts of the United States and its territories, and "all courts of record in any state or territory now existing, or which may hereafter be created, having a seal, a clerk and jurisdiction in actions at law or equity, or law and equity, in which the amount in controversy is unlimited." Jurisdiction is confined to persons resident of the judicial district.

The Superior Courts, as you know, are the courts of this State of general and unlimited jurisdiction. Under our law we have regular terms of court and special terms of court, the regular terms of court being fixed by statute, found in General Statutes 7-70, and special terms of court as provided by General Statutes 7-77, et seq. There is no provision in our law under which you could issue blanket authority to a judge for the holding of an indefinite and undetermined term of court. It would, therefore, seem to me to be impossible under the law in this State for you to comply with the request made by Mr. Butterfield. You can, of course, order special terms and designate the judge to hold the same whenever found to be necessary, as authorized by G. S. 7-78.

STATE MILITIA; ONLY MALE CITIZENS MAY SERVE IN NORTH
CAROLINA STATE GUARD

27 April, 1944.

Brigadier General James W. Jenkins of the North Carolina State Guard, in a letter to you of April 24, inquired as to whether or not members of the female sex may enlist in the State Guard and whether or not a State Guard Auxiliary may be organized, allowing each unit of the Guard to appoint two ladies to each battalion and others to each regimental commander. He states that the ladies would not participate in field training, camps, or active duty, but would serve only to relieve officers and men of routine administrative work at home stations.

Section 127-111 of the North Carolina General Statutes provides that upon the United States calling all or any part of the National Guard of the State into active federal service, the Governor, subject to such regulations as the Secretary of War may prescribe, may organize such part of the *unorganized militia* as the state force, for discipline and training, into companies, battalions, or regiments, etc., and to maintain, uniform, and equip such military force.

Paragraph 2 of this section provides that such military force shall be designated as the "North Carolina State Guard" and shall be composed of men of the unorganized militia who shall volunteer for service therein or shall be drafted as provided by law.

It will be noted that the members of the North Carolina State Guard shall be composed of men of the unorganized militia. Section 127-4 of the North Carolina General Statutes provides that the unorganized militia shall consist of all other able bodied *male citizens*

of the State and all other able bodied *males* who have or shall have declared their intention to become citizens of the United States.

It therefore appears that members in the North Carolina State Guard are limited to able bodied males of the State.

As suggested in my conference with you, I am of the opinion that members of the female sex may organize a State Guard Auxiliary, not requiring any oath but merely an honorary organization, the members of which could volunteer and render such clerical, stenographic or routine administrative work as they are qualified to render to the State Guard. This could be purely voluntary service without compensation or may be paid such compensation as might be fixed by the proper officials.

I see no objection to these ladies wearing a uniform to be furnished by the State Guard while on duty in connection with their work with the Guard.

I thoroughly agree with you that the patriotic ladies of this State should be given an opportunity to render this valuable service to the State Guard and that the present law should probably be amended to permit the ladies of the State to become members of the State Guard or any auxiliary organization, somewhat similar to the WACs, WAVES, or SPARs.

COURTS; ISSUANCE OF NUNC PRO TUNC COMMISSION TO PRESIDING
JUDGE

10 May, 1944.

Receipt is acknowledged of your letter of May 8, enclosing a letter of the same date from Honorable J. P. Shore, Clerk of the Superior Court of Guilford County, in which it is requested that the Governor issue *nunc pro tunc* commissions to Judge Hubert E. Olive and Judge Leo Carr to hold terms of court in Guilford County for the purpose of validating the naturalization of two groups of soldiers who appeared before Judge Olive and Judge Carr in that County and were naturalized.

I regret to state that I am of the opinion that the Governor would have no authority to validate the actions of Judge Olive and Judge Carr by the issuance of *nunc pro tunc* commissions to hold courts in Guilford County at the time these proceedings were had, and that the issuance of these commissions *nunc pro tunc* would not have the desired effect. *Nunc pro tunc* orders of a judicial and executive nature can be used only in those cases in which judicial or official action was taken at the time, and when there was an omission to sign the order or decree, in accordance with the action taken. Where no action had been taken by the Governor at the time of calling a special term and designating a judge by commission to hold the same as authorized by the statute, the *nunc pro tunc* commissions would, in my opinion, be inappropriate and the Governor would not be authorized to issue them.

OPINIONS TO SECRETARY OF STATE

COOPERATIVE ORGANIZATIONS; AMENDMENTS TO CHARTER

1 July, 1942.

I have your letter of June 29 relative to an amendment to articles of incorporation of a coöperative organized under Chapter 87 of the Public Laws of 1921, as amended, attached to which is correspondence from Messrs. Goddin and Hardy, Attorneys, of Richmond, Virginia, wherein it is argued very plausibly that an amendment to the charter of the corporation organized under the above Act is not required to be assented to in writing by a majority vote of a quorum of the members attending the meeting called for the purpose of amending the charter of such corporation.

The latter part of C. S. 5259(g) provides that "amendments to the articles of incorporation, when so adopted, shall be filed in accordance with the provisions of the general corporation law of this State." The general law of this State relating to amendments to corporations generally provides in part as to the filing of the same with the Secretary of State as follows:

"... a certificate thereof shall be signed by the President and Secretary, under the corporate seal, acknowledged as in the case of deeds to real estate and this certificate, together with the written assent, in person or by proxy, of said stockholders, shall be filed and recorded in the office of the Secretary of State."

In my opinion, the certificate of amendment required to be filed should include the written assent to the amendment of a majority vote of a quorum of the members attending a meeting called for the purpose of adopting an amendment to the charter, if it is to be filed in accordance with the provisions of C. S. 1131, which is the general law of this State relating to the amendments to corporations.

CAPITAL ISSUES LAW; M. AND J. FINANCE CORPORATION; SALE OF CAPITAL STOCK OF CORPORATION; APPLICABILITY OF CAPITAL ISSUES LAW

21 May, 1943.

In your letter of May 19, 1943, you inquire as to the applicability of the Capital Issues Law (Chapter 71(a) of the North Carolina Code, Annotated (Michie, 1939)), to certificates of investment issued by the M. and J. Finance Corporation of Shelby, North Carolina.

From the file which you enclosed with your letter, it appears that that corporation sold an increase in its capital stock, said increase being authorized by the corporation and the stock being sold by salaried employees of the corporation with commission and the entire sales price added to the assets of the corporation. It further appears that the certificates of investment sold by this corporation are negotiable instruments which mature within six months but not less than thirty days from the date of issuance.

I am of the opinion that the North Carolina Capital Issues Law has no application to such sales. Section 3924(c) of the North Carolina Code, Annotated (Michie, 1939), limits the applicability of the Capital Issues Law. Subsection (g) thereof reads as follows:

"Negotiable promissory notes or commercial paper if such issue of negotiable notes or commercial paper mature in not more than fifteen months from the date of issue and shall be issued within three months after date of sale."

Also, Section 3924(d) of the Code lists certain transactions which are exempted from the operation of the Capital Issues Law. Subsection (7) thereof reads as follows:

"Subscriptions for shares or sales or negotiations for sales of shares of the capital stock in domestic corporations, when no expense is incurred, and no commission, compensation or remuneration is paid or given for, or in connection with, the sale or disposition of such securities."

Section 3924(f) provides that no securities shall be sold within this State until registered, except those securities exempted by Section 3924(c) or those transactions exempted by Section 3924(d). Section 3924(g) makes it unlawful to advertise or circulate price lists, order blanks, etc., before the securities have been registered under Section 3924(f). However, this section specifically exempts the securities exempted by Section 3924(c) and the transactions exempted under Section 3924(d).

Therefore, it would appear from the file that the Capital Issues Law is not applicable to these certificates of investment nor to this corporation as long as the practice outlined in the file is followed.

SALES TAX LIABILITY OF FRATERNAL LODGE FOR MEALS SERVED TO MEMBERS

27 May, 1943.

You have requested my opinion upon the following matter.

The Raleigh Lodge of the B.P.O.E. maintains a lodge hall at which the evening meal is served to members of the lodge one night each week. The preparation and serving of the meals are under the supervision of a committee of the lodge. This committee purchases the food and employs a cook to prepare it in the lodge hall on a stove and with equipment owned by the lodge. The food is served to the members, and to them only, in order to encourage attendance at meetings. Not only is no profit made on the meals but they are served at an actual loss. You inquire whether any sales tax liability exists on the part of the lodge on account of this activity.

It is my opinion that no sales tax is due the State of North Carolina by the lodge on account of the preparation and serving of such meals under the facts stated above. The North Carolina sales tax is levied upon the sale of tangible personal property in this State by a retail or wholesale merchant. Revenue Act Section 401. The definition contained in Section 404 of the Revenue Act of "sale" is controlling in interpreting the sales tax law. This section defines

"sale" to mean "any transfer of title or possession, or both, exchange, or barter of tangible personal property, conditional or otherwise, for a consideration paid or to be paid. . . ." Thus, a taxable sale is one in which there has been a transfer of title or possession or both. In the case you refer to the food is bought by the lodge and served to the lodge; hence, there is no transfer of title or possession and there are no taxable sales.

N. C. STATE BAR; CLASSES OF MEMBERSHIP

27 May, 1943.

You refer me to House Bill No. 803, enacted into law by the recent Legislature, which provides in part as follows:

"For a period of six months following the ratification of this Act he (Secretary of State) shall offer said volumes to judges and officials of the Supreme and Superior Courts, law libraries in the State of North Carolina, State offices and agencies, and *active members of the North Carolina State Bar*, for cost of postage and packing."

You inquire as to who constitutes the "active members of the North Carolina State Bar."

The North Carolina State Bar was created by Chapter 210 of the Public Laws of 1933, and Section 2 thereof provides:

"The membership of the North Carolina State Bar shall consist of two classes, active and honorary.

"The active members shall be all persons who shall have heretofore obtained, or who shall hereafter obtain, a license or certificate, which shall at the time be valid and effectual, entitling them to practice law in the State of North Carolina. No person other than a member of the North Carolina State Bar shall practice in any court of the State, except foreign attorneys as provided by statute."

This section further provides for honorary members, consisting of the Chief Justice and other Judges of certain of the courts of the State, and provides that only active members shall be required to pay annual membership fees or have the right to vote.

Chapter 21 of the Public Laws of 1939, Section 1, amended Section 2 of Chapter 210 of the Public Laws of 1933 by changing the period to a comma and inserting the following: "Who shall have paid the membership dues hereinafter specified." Section 2 of said Chapter 21 increased the membership dues to \$5.00 per year and required the same to be paid prior to the first day of July of each year, beginning with the calendar year 1939.

So that Section 215, Subsection 2, of the Consolidated Statutes entitled "Membership and Privileges" says:

"The membership of the North Carolina State Bar shall consist of two classes, active and honorary.

"The active members shall be all persons who shall have heretofore obtained, or who shall hereafter obtain, a license or certificate, which shall at the time be valid and effectual, entitling them to practice law in the State of North Carolina, *who shall have paid the membership dues hereinafter specified*. No person other

than a member of the North Carolina State Bar shall practice in any court of the State, except foreign attorneys as provided by statute."

It is perfectly clear from the language of Section 215, Subsection 2, of the Consolidated Statutes that the present active members of the North Carolina State Bar are those who have heretofore obtained a license or certificate, which shall at the time be valid and effectual, entitling them to practice law in the State of North Carolina, and who shall have paid the membership fees as required by Section 215, Subsection 17, of the Consolidated Statutes.

TRADE-MARKS; REGISTRATION; RIGHT TO ISSUE COVERING SET OF BOOKS

17 February, 1944.

You submit to this office correspondence between you and the law firm of Clark & Ott, of New York City, relative to the registration of "The Book of Knowledge" as a trade-mark under the laws of the State of North Carolina.

The North Carolina law covering the registration of trade-marks is found in Chapter 80 of the General Statutes of North Carolina, beginning with Section 80-1. Section 80-1 provides that it shall be lawful for any person to adopt for his protection and file for registration any label, trade-mark, term, or design that has been used or is intended to be used for the purpose of designating, making known, or distinguishing any goods, wares, merchandise, or products of labor that have been or may be wholly or partly made, manufactured, produced, prepared, packed, or put on sale by any such person, or to or upon which any work or labor has been applied or expended by any such person or by any member of any corporation or association or union of working men that has adopted and filed for registration any such label, trade-mark, term, or design, or announcing or indicating that the same have been made in whole or in part by any such person or corporation or association or union of working men or by any member thereof.

The word "person" as used in this section and in the sections following includes associations or unions of working men whether incorporated or unincorporated. The sections immediately following the section above referred to outline in detail the method to be followed in filing labels, trade-marks, etc., covered by the statute.

In a letter to you dated June 13, 1940, this office expressed the view that the North Carolina statute on trade-marks does not contemplate the registration of the title of a publication as a trade-mark. This is still the opinion of this office. The name or title of a book does not constitute a trade-mark. *Downs v. Culbertson*, 275 N. Y. S. 233 (1935); *Black v. Ehrich*, 44 Fed. 793 (1891); *Derenberg*, *Trade Mark Protection and Unfair Trading*, p. 228, n. 16; 63 C. J. 367, and cases there cited. In *Black v. Ehrich*, *Supra*, at page 794, the court said:

"If literary property could be protected upon the theory that the name by which it is christened is equivalent to a trade-mark, there would be no necessity for copyright laws."

In the letter from Messrs. Clark & Ott, dated February 9, 1944, it is pointed out that the name of a series of publications may be registered as a trade-mark. There is ample authority to support this statement. In Nims, Unfair Competition and Trade-Marks, sec. 277, the author says:

"A publisher will be restrained from imitating the title and form under which a series of books of a rival has become popular with the public. . . . The title of such a series may be registered as a trade-mark, but not where it is merely the title of one volume in the series, and thus is descriptive."

63 C. J. 367, sec. 69, states that:

"A name applied to a series of books may, however, constitute a trade-mark; but it must be arbitrary and not merely the name of one or more of the books in the series."

In *Social Register Assn. v. Howard*, 60 Fed. 270 (1894), cited by Clark & Ott, the court held that the words "Social Register," as applied to a series of publications, constituted a valid trade-mark. It is unquestioned that the name of periodicals may constitute valid trade-marks. 63 C. J. 367.

Applying the rules laid down in the authorities referred to above and conceding that a name applied to a series of books may be registered as a trade-mark; still I am unable to agree with the conclusion reached by Messrs. Clark & Ott as to registration of the title, "The Book of Knowledge," as a trade-mark. From all the information I am able to acquire, "The Book of Knowledge" is a set of books in the nature of a children's encyclopedia. The fact that the set consists of more than one volume does not, to my mind, constitute it a series of books published under the name, "The Book of Knowledge." It appears to me that it would be properly called a set of books with that particular title. It is true that the encyclopedia has been revised and reprinted several times but I do not think that this fact would constitute it a periodical or a series. It is my opinion that the title, "The Book of Knowledge," is the title of a single literary work and that under the authority hereinbefore pointed out it should not be registered as a trade-mark.

CORPORATIONS; STOCK CARRYING MULTIPLE VOTING RIGHTS

25 March, 1944.

You inquire in your letter of March 23, 1944 if a corporation may be organized under the laws of North Carolina having shares of stock which carry multiple voting rights. As an example, you inquire if a corporation may be organized with common stock having one vote per share and preferred stock having ten votes per share.

There is no statute in North Carolina which expressly authorizes such a procedure nor is there a court decision directly in point. However, Sections 55-61 and 55-110 of the General Statutes of North Carolina impliedly authorize the creation of a corporation having such shares of stock.

G. S. 55-61 reads, in part, as follows: "Every corporation has power to create two or more kinds of stock of such classes, with such designations, preferences, and voting powers or restrictions or qualifications thereof as are prescribed by those holding a majority of its outstanding capital stock entitled to vote; . . ."

The opening portion of Section 55-110 is as follows: "*Unless otherwise provided in the charter or by-laws of a corporation*, at every election each stockholder is entitled to one vote in person, or by proxy duly authorized in writing for each share of the capital stock held by him, . . ."

General principles of corporation law do not prohibit the creation of shares of stock having such rights. See, generally, Fletcher Cyclopedia, Corporations, Vol. V, Chapter 13.

Since there is implied authority under the North Carolina statutes and since the general principles of corporation law do not prohibit the creation of such shares of stock, it is my opinion that a corporation may be organized having stock such as described by you.

STATE LANDS; SURVEYS; PLATS; PREPARATION BY SURVEYOR

29 March, 1944.

Receipt is acknowledged of your letter of March 21 in which you inquire as to whether, in my opinion, all the matter required to be set down by the county surveyor under the provisions of G. S. 146-35 is required to be placed on the same sheet of paper with the plat.

It is my thought, after giving thorough consideration to the language used in this particular section, that the Legislature intended that the information required therein should be on the sheet of paper with the plat. However, if the plat together with all the information required cannot be placed on one sheet of paper, I can see no reason why more than one sheet of paper may not be used so long as the sheets used clearly show that they are all a part of the same survey or transaction.

OPINIONS TO STATE AUDITOR

CONFEDERATE PENSIONS; WIDOWS; ELIGIBILITY; INMATE OF COUNTY HOME

28 January, 1943.

You enclose in your letter correspondence between your Office and Honorable S. H. Chaffin, Clerk of Superior Court of Davie County, relative to the eligibility of Mrs. Fannie Harris Dunn to a Confederate pension. The only question at issue seems to be on the point as to whether Mrs. Dunn is ineligible by reason of the provisions of Section 5168(k) of Michie's North Carolina Code of 1939 Annotated.

This Section provides that no person shall be entitled to the benefits of Article III, entitled "Pensions," who is confined in an asylum or county home. It is my thought that the Legislature intended to make persons ineligible who are confined in an asylum or county home and supported at public expense.

In the case of Mrs. Dunn, if she is confined in the county home and the expense of her maintenance there is paid by the county, she would not be entitled to the benefits of the Pension Act. However, if she merely resides at the county home and actually pays a monthly consideration for her maintenance at the county home, she would be eligible for pension benefits, provided she is otherwise qualified.

It appears from Mr. Chaffin's letter of January 11 that Mrs. Dunn merely resides at the county home under an agreement to pay \$20.00 per month for room, board and medical care. If this is true, it seems to me that the doubt should be resolved in favor of Mrs. Dunn and she should not be deprived of eligibility under the provisions of Section 5168(k).

LAW ENFORCEMENT OFFICERS BENEFIT AND RETIREMENT FUND; MEMBERSHIP AND PAYMENT OF DUES BY LAW ENFORCEMENT OFFICER WHO ENTERS INTO EMPLOYMENT OTHER THAN LAW ENFORCEMENT WORK

11 March, 1943.

I acknowledge receipt of your letter of the 3rd inst., enclosing a letter from former Sheriff Phipps of Guilford County.

I understand from these letters that Sheriff Phipps has retired as Sheriff of Guilford County and is now engaged in a business or employment other than that of law enforcement work covered by Chapter 157 of the Public Laws of 1941; that Sheriff Phipps desires to remain as a member of the Law Enforcement Officers Benefit and Retirement Fund, and has forwarded to you a check covering his dues.

I understand further from your letter that a person who, because of no fault of his own, is retired as a law enforcement officer but who returns to duty as a law enforcement officer within a reasonable

length of time, is permitted to continue his membership in the Fund, but that if such member fails to return to law enforcement work within a reasonable length of time, he loses his membership and is refunded the amount of contributions he has made to the Fund. I understand that the Board of Commissioners of the Law Enforcement Officers Benefit and Retirement Fund has adopted this rule and regulation.

Section 9 of Chapter 349 of the Public Laws of 1937 provides, in part, as follows:

"Such committee shall, under the direction of the Governor, promulgate rules and regulations for the proper disbursement of the funds and *fixing eligibility* as to those who shall be adjudged to be proper recipients of such benefits."

From this quotation it occurs to me that the Board of Commissioners of the Law Enforcement Officers Benefit and Retirement Fund has ample power and authority to set up the necessary rules and regulations as to the disbursement of the Fund, and as to the eligibility of the membership participating in said Fund; and that the rule and regulation quoted in your letter as having been adopted by the Board is authorized by Section 9 of said Chapter 349 of the Public Laws of 1937.

If it is the purpose and intention of Sheriff Phipps to return to law enforcement work within a reasonable length of time, you should permit him to continue to be a member and to accept the dues tendered by him. When the Board has determined that a reasonable length of time has been allowed in which to permit the applicant to return to law enforcement work, or if prior to such date the applicant notifies the Board that he has determined that he will not return to law enforcement work, his membership should terminate and he should be refunded the contribution made by him to which he is entitled.

LAW ENFORCEMENT OFFICERS BENEFIT AND RETIREMENT FUND; COST FOR BENEFIT OF FUND INCREASED FROM \$1.00 TO \$2.00

11 March, 1943.

I acknowledge receipt of your letter of March 1, enclosing a letter from Honorable John H. Taylor, Mayor of Littleton.

Mr. Taylor makes two inquiries:

(1) He inquires whether or not the fee allowed to be charged in the bill of costs for the use and benefit of the Law Enforcement Officers Benefit and Retirement Fund, provided for by Chapter 157 of the Public Laws of 1941, has been increased, and if so, the effective date of such increase.

I understand that an Act has been passed at the recent session of the General Assembly increasing the item of cost assessed under Chapter 157 of the Public Laws of 1941 from \$1.00 to \$2.00, and that said Act is to be in full force and effect as of March 15, 1943. Therefore, all of the bills of cost in all criminal cases disposed of in the

courts of this State will include a fee of \$2.00 for the use and benefit of the Law Enforcement Officers Benefit and Retirement Fund, effective as of March 15, 1943.

(2) Mayor Taylor further inquires as to whether or not he should assess the \$2.00 fee against each defendant in cases where there are several defendants who have been convicted or pleaded guilty in the same warrant, or one charge of \$2.00.

While the provisions of Section 1 of Chapter 157 of the Public Laws of 1941 covering this question are not entirely clear, I am of the opinion that the legislative intent of said section is to require an assessment in the bill of costs of \$2.00 against each defendant in the warrant who pleads guilty or is convicted.

CLERK OF SUPERIOR COURT; OFFICIAL SEAL; PROCUREMENT OF NEW SEAL; EXPENSE OF PROVIDING

14 April, 1943.

The General Assembly of 1943 enacted Senate Bill No. 349, Section 1 of which amends C. S. 7650 so as to read as follows:

"Whenever the Great Seal of the State shall be lost or so worn or defaced as to render it unfit for use, the Governor shall provide a new one and when such new one is provided, the former one, if it can be found, shall be destroyed in the presence of the Governor. Whenever the seal of any department of the State shall be lost or so worn or defaced as to render it unfit for use, a new seal shall be provided by the head of the department and the former one, if it can be found, shall be destroyed in the presence of the head of the department. Whenever the seal of any court of record shall be lost or so worn or defaced as to render it unfit for use, the board of county commissioners of the county in which such court is situate shall provide a new one and the old one, if it can be found, shall be destroyed in the presence of the chairman of the board of county commissioners of such county."

It is my opinion that the General Assembly, in rewriting C. S. 7650, intended that the Board of County Commissioners of the county, in which a court is situate, should provide a new official seal for any court of record where the old seal is lost or is so worn or defaced as to render it unfit for use. It is further my opinion that the expense of providing such a seal should be borne by the county in which the court of record is situate.

OPINIONS TO STATE TREASURER

TEACHERS AND STATE EMPLOYEES RETIREMENT SYSTEM; APPLICATION
FOR RETIREMENT ON ACCOUNT OF AGE; PAYMENT OF BENEFITS;
RIGHT OF PERSON ON RETIRED LIST ON ACCOUNT OF
AGE TO BE RE-EMPLOYED AND PAID BY THE
STATE FOR SERVICES RENDERED

29 September, 1942.

You inquire as to whether a teacher or State employee, who has filed the proper application for retirement on account of age and such application has been acted upon by the Board of Trustees of the Teachers and State Employees Retirement System, and the applicant duly placed upon the retired list, and to whom a State warrant has been issued covering the first installment of retirement benefits, would have the right to be thereafter employed by the State and paid for services rendered.

Section 5(1) (a) of the Teachers and State Employees Retirement Act provides the method to be used by a member who seeks voluntary retirement on account of age. Section 3(3) provides that under certain conditions a member ceases to be a member of the System, one of which is that such member become a beneficiary. I am unable to find any provision in the Retirement Act which authorizes the reinstatement to membership of a person who has been retired under the provisions of the Act on account of age.

It is my opinion that where the Board of Trustees has acted upon a voluntary application for retirement on account of age and has placed the applicant on the retired list and a State warrant has been issued covering an installment of retirement benefits, the retirement of the applicant from active service is complete and the person so retired could not thereafter be employed as a teacher or State employee and paid by the State for services rendered.

In reaching this conclusion, I have taken into consideration the fact that the Board of Trustees of the Retirement System has concluded that it is without authority to reinstate members who have voluntarily retired on account of age or to suspend payment of retirement benefits for a stated period and allow the person already retired to be reemployed without again becoming a member of the Retirement System.

STATE DEBT; BONDS OF 1869

26 October, 1942.

You have heretofore handed me a letter from Gibbs-Brower Company, Incorporated, relative to certain bonds of the State of North Carolina dated April 1, 1869.

I have made an investigation relative to the case referred to in the news item referred to in the *New York World* on June 10, 1917. It has been impossible for me to locate any such case. There, undoubtedly, must be some mistake, or the case did not reach any of the appellate courts.

Article I, Section 6, of the Constitution of North Carolina, provides:

"The State shall never assume or pay, or authorize the collection of any debt or obligation, express or implied, incurred in aid

of insurrection or rebellion against the United States, or any claim for the loss or emancipation of any slave; nor shall the General Assembly assume or pay, or authorize the collection of any tax to pay, either directly or indirectly, expressed or implied, any debt or bond incurred, or issued, by authority of the Convention of the year one thousand eight hundred and sixty-eight, nor any debt or bond incurred or issued by the Legislature of the year one thousand eight hundred and sixty-eight, either at its special session of the year one thousand eight hundred and sixty-eight, or at its regular sessions of the years one thousand eight hundred and sixty-eight and one thousand eight hundred and sixty-nine, and one thousand eight hundred and sixty-nine and one thousand eight hundred and seventy, except the bonds issued to fund the interest on the old debt of the State, unless the proposing to pay the same shall have first been submitted to the people and by them ratified by the vote of a majority of all the qualified voters of the State, at a regular election held for that purpose."

The bonds referred to in the Gibbs-Brower Company letter seem to be specifically mentioned in this constitutional provision.

STATE DEBT; OLD STATE BONDS REFUNDABLE

7 December, 1942.

You inquire as to whether, in my opinion, a bond issued pursuant to a funding act of August 20, 1868 would be exchangeable or redeemable, and if so, at what per cent of the principal.

Article I, Section 6 of the Constitution of North Carolina, prohibits the payment of certain designated bond issues specifically set out in said Section. There is an exception contained in this Section which excepts the bonds issued to fund the interest on the old debt of the State.

Consolidated Statutes 7414 provides that the bonds mentioned in C. S. 7411 shall be exchanged at the following rates:

"Class 3. Bonds exchangeable at fifteen per cent; proviso:

"And those issued in pursuance of said funding acts of March tenth, eighteen hundred and sixty-six, and August twentieth, eighteen hundred and sixty-eight, fifteen per cent of the principal of the bond or bonds so surrendered: Provided, that all bonds issued in exchange for the new bonds shall be surrendered with all the coupons attached."

The bond about which you particularly inquire is a bond in the sum of \$500.00 designated as No. 320 and purports to be issued pursuant to the funding act of August 20, 1868. If this bond was issued pursuant to the funding act of August 20, 1868, and was issued to fund the interest on the old debt of the State, it would be redeemable at fifteen per cent of its face value.

TRANSFER \$1,000 5 PER CENT NORTH CAROLINA FUNDING BOND No. 3347,
J. C. PURNELL, JR., EXECUTOR

28 July, 1943.

I have given consideration to the file you left with me concerning the transfer of the above bond, now registered in the name of J. C. Purnell, Executor of the Estate of James C. Purnell, Deceased, to James C. Purnell, Jr.

It appears from an inspection of the Last Will and Testament of James C. Purnell that after making certain specific bequests, under the terms of the sixth item of the Will, the residue of the estate is bequeathed to his two sons, James C. Purnell, Jr. and Rhessa H. Purnell, to be equally divided among them, and that they are to assume the obligations of the testator and the payment of the bequests provided for in the Will as they become due.

It further appears from a petition filed by the executors named in the Last Will and Testament of James C. Purnell that all the debts and funeral expenses have been paid and that the annuities provided for in the Will have been paid in strict accordance with the provisions of the Will to date, and are continuing to be paid in strict accordance therewith. The petition further sets out a list of certain stocks and alleges an agreement as to the division of these stocks between James C. Purnell, Jr., and Rhessa H. Purnell, and further alleges that all other personal property and choses in action held by the executors should be delivered to James C. Purnell, Jr., and Rhessa H. Purnell, as residuary legatees and devisees.

The order of L. A. Smith, Sr., Chancellor of the Chancery Court of Montgomery County, Mississippi, dated June 14, 1943, after finding the facts as alleged in the petition, granted the prayer contained in the petition and ordered the executors to transfer the corporate stocks specifically enumerated in the petition and in the order to James C. Purnell, Jr., and Rhessa H. Purnell, in accordance with their agreed division thereof, as set out in the petition, and further ordered that all other property and choses in action held by the executors be delivered to James C. Purnell, Jr. and Rhessa H. Purnell as residuary legatees and devisees and that the decree was to be full authority and power for the various concerns and corporations to transfer the stocks on their books on presentation of said stocks duly so transferred by the executors.

It will be noted that nowhere in the petition or in the order is the bond which is now sought to be registered in the name of James C. Purnell, Jr., specifically mentioned. I therefore assume that it is included in the portion of the estate designated in the petition and in the order as "all other personal property." If this is true, under the provisions of the Will, the petition and the order, the bond in question now actually is the property of James C. Purnell, Jr. and Rhessa H. Purnell.

It is therefore my opinion that it will be necessary that Rhessa H. Purnell individually agree that the bond in question be transferred and registered in the name of James C. Purnell, Jr.

I notice in the assignment by the executors of the estate of James C. Purnell, authorizing the transfer, that the name James C. Purnell is used instead of James C. Purnell, Jr. This should be corrected. I also note that Mr. Purnell requests that you return all the papers he sent you. It is my opinion that you should have copies of these papers for your files in order that you may be able at any future time to show justification for the registration of the bond in question in the name of James C. Purnell, Jr.

OPINIONS TO STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

SCHOOLS; TEACHERS; NOTICE OF REJECTION; NOTICE OF ACCEPTANCE

1 July, 1942.

In your letter of June 29 you enclose letter from Honorable J. S. Blair, Superintendent of Bladen County Schools, in which he states that teachers A- and B- were employed in the same school; that neither teacher was notified of rejection prior to the close of the school term and neither teacher gave notice of acceptance for the ensuing year. You desire to know the status of these teachers at the present time.

Section 7 of the School Machinery Act of 1939, as amended, provides that a teacher's contract shall continue from year to year until the teacher is notified as provided in Section 12 of the Act, as amended. This section contains a further proviso that a teacher shall give notice to the superintendent of schools of the administrative unit in which such teacher is employed within ten days after the close of school of his or her acceptance for the following year. Section 12 of the Act makes it the duty of the county superintendent or administrative head of a city administrative unit to notify all teachers by registered letter of their rejection prior to the close of the school term, subject to the allotment of teachers made by the State School Commission.

Under the provisions of these sections, the duty of notifying teachers of their rejection is placed on the administrative head of the unit, and if no such notice is given, the teacher's contract continues during the following year. The General Assembly, however, placed a duty on the teacher to notify the head of the administrative unit within ten days after the close of school of his or her acceptance for the following year in order that the head of the administrative unit and the other school authorities might be advised as to the number of vacancies which it would be necessary for them to fill. If the teacher fails to give the notice of acceptance within the time set out in the statute, it is my opinion that his or her contract would be terminated and the school authorities would be justified in electing another teacher to fill the vacancy. This does not mean that the local authorities could not again elect such a teacher to teach during the following year, but it is my opinion that it would be necessary for such teacher to be elected in the same manner as a new teacher.

SCHOOLS; DEBT SERVICE; DISTRIBUTION; LOCAL SUPPLEMENT;
REQUEST FOR FUNDS

14 July, 1942.

Receipt is acknowledged of your letter of July 2, received by this office on July 6, enclosing letter from Hon. C. S. Warren, Superintendent of Lenoir Public Schools, dated June 11, 1942, and a letter

from Hon. Paul A. Reid, Superintendent, Elizabeth City Public Schools, dated July 1, 1942.

The letter from Mr. Warren raises the question as to whether indebtedness to the State Literary Fund should be included in the school debt service budget of the county. Section 15 of the School Machinery Act of 1939, as amended, provides for the filing of a debt service budget by both county and city administrative units. This Section further provides for the distribution of debt service funds in the following manner:

"All county-wide Debt Service funds shall be apportioned to county and city administrative units and distributed at the time of collection and when available shall be expended in the same manner as are county-wide Current Expense school funds: Provided, that the payments to any administrative unit shall not exceed the actual needs of said units, including sinking fund requirements. The per capita enrollment basis shall be determined by the State School Commission and certified to each administrative unit. Provided, further, that the debt service apportionment between county and city administrative units shall apply only to debt service for capital outlay obligations incurred by counties and cities prior to July 1, 1937, except in those counties where special legislation has been enacted providing for the issuance of school building bonds in behalf of school districts, and special bond tax units. (The provisions of this amendment do not apply to refunding bonds issued for school capital outlay obligations.)"

It is my opinion that the debt service budget of the county should include all county-wide obligations, including the amount due the State Literary Fund. However, when the distribution of county-wide debt service funds is made between county and city administrative units, obligations for capital outlay are not to be considered unless incurred prior to July 1, 1937, except in counties where special legislation has been enacted providing for the issuance of school building bonds in behalf of school districts and special bond tax units.

The question of what a tax receipt should contain is governed by Section 1102 of the Machinery Act of 1939, as amended, which is as follows:

"Such persons as the county commissioners may designate shall fill out the receipts and stubs for all taxes charged upon the tax books. The form of such receipts and stubs shall be approved by the State Board of Assessment and shall show at least the following:

"(a) The name of the taxpayer charged with taxes.

"(b) The amount of valuation of real property assessed for county-wide purposes.

"(c) The amount of valuation of personal property assessed for county-wide purposes.

"(d) The total amount of valuations of real and personal property assessed for county-wide purposes.

"(e) The rate of tax levied for each county-wide purpose, the total rate for all county-wide purposes, and the rate levied for any special district or subdivision of the county, which tax is charged to the taxpayer.

"(f) The amount of the valuation of property assessed in any special district or subdivision of the county.

"(g) The amount of ad valorem tax due by the taxpayer for county-wide purposes.

"(h) The amount of poll tax due by the taxpayer.

"(i) The amount of dog tax due by the taxpayer.

"(j) The amount of tax due by the taxpayer to any special districts or subdivisions of the county.

"(k) The total amount of tax due by the taxpayer to the county and to any special district, subdivision or subdivisions of the county.

"(l) Amount of discounts.

"(m) Amount of penalties."

The question raised by Mr. Reid is whether the County Board of Education has any connection with the levy and collection of the local supplement voted by the Elizabeth City administrative unit.

It is my opinion that under the provisions of the School Machinery Act of 1939, as amended, the request for funds authorized under the provisions of Section 14 of the School Machinery Act should be filed with the proper tax levying authorities by the school authorities of the city administrative unit and that the County Board of Education would have no authority in connection therewith. It is also my opinion that it would not be necessary that the funds, when collected, pass through the hands of the County Board of Education.

SCHOOL LAW; WASHINGTON CITY ADMINISTRATIVE UNIT; ELECTION OF TRUSTEES

15 July, 1942.

I have your letter of July 13, 1942, enclosing the letter from Mr. E. S. Johnson, Superintendent of Schools in Washington, North Carolina, which relates to the election of trustees from the Washington City Administrative Unit. Mr. Johnson states that boundary lines of the Washington City Administrative Unit extend beyond the corporate limits of the City of Washington, and he inquires whether persons living outside the city limits but within the territory included in the school unit may be elected to the Board of Trustees. You have requested an opinion on the question raised by Mr. Johnson's letter.

The Washington City Administrative Unit was originally a special charter school district created by Public Laws of 1899, Chapter 409. As you know, all special charter districts, as such, were abolished by Public Laws of 1933, Chapter 562, Section 4. However, certain special charter districts existing in 1933 were classified as city administrative units under the authority of the 1933 Act cited above, and in such cases the trustees of the special charter district and their duly elected successors were retained as the governing body of the city administrative unit. Public Laws of 1933, Chapter 562, Section 4; Public Laws of 1939, Chapter 358, Section 5. The Washington Special Charter District was continued as a City Administrative Unit, and, therefore, the trustees of the Washington City Administrative Unit should be elected in the manner provided for election of trustees of the old special charter district.

In Section 1 of Public Laws of 1899, Chapter 409, the act under which the Washington Special Charter District was created, it was provided that the area embraced within the corporate limits of the Town of Washington should constitute a school district. Section 6 of the same Act provides:

"That the graded public schools in said district shall be under the control and management of a board of trustees composed of seven (7) members, citizens of said town, who shall be elected by the board of commissioners of the Town of Washington. . . ."

Other provisions which govern the time and method of election of the trustees and their terms of office follow.

By Chapter 136 of Private Laws, Extra Session 1921, the boundaries of the Washington Special Charter District were extended so as to include considerable territory lying outside the Washington corporate limits. Section 2 of this Act, relating to the board of trustees for the enlarged district, provided in part:

"That the board shall consist of seven members as heretofore, that the existing members shall serve the enlarged district until the expiration of their term, and their successors shall be elected by the board of aldermen of the City of Washington, and be divided into classes and serve for the same term as heretofore provided."

By Private Laws of 1933, Chapter 228, the membership of the board of trustees was increased from seven to nine members, but no new regulation as to the qualification of members was added.

The provision in Public Laws of 1899, Chapter 409, Section 6, that the board of trustees of the Washington Special Charter District shall consist of "citizens of said town" has never been expressly repealed or amended. However, at the time of its enactment, the boundaries of the school district and of the Town of Washington were coterminous, and the probable intent of the General Assembly was to require trustees to be citizens in the area for which they served rather than to attach particular importance to municipal citizenship. The 1921 Act, which enlarged the district, directs that the trustees "shall serve the enlarged district." Inasmuch as the trustees are to serve the enlarged area, I believe the election of trustees who are citizens anywhere in this area, regardless of their municipal citizenship, will be in conformity with the legislative purpose in enacting the citizenship requirement in the original Act of 1899.

In my opinion, Section 6 of Chapter 409 of the Public Laws of 1899, should be regarded as impliedly amended by Private Laws, Extra Session, 1921, Chapter 136, Section 3, so as to make any citizen of the area included in the Washington City Administrative Unit eligible to serve on its board of trustees. Such a construction will obviate constitutional objections to the citizenship requirement in the 1899 Act which might be asserted on the ground that it results in special privileges being granted to the citizens of Washington in violation of Article I, Section 7, of the North Carolina Constitution.

DOUBLE OFFICE HOLDING; SCHOOL COMMITTEEMAN; COMMUNITY
COMMITTEEMEN AND REPORTER UNDER AAA; MEMBER OF
COMMITTEE OF TEN FOR FARM SECURITY ADMINISTRATION

24 July, 1942.

In a letter from Mr. W. E. Sawyer, which you referred to this office, an inquiry is made as to whether a school committeeman may legally be a community committeeman and reporter under the AAA, and whether a school committeeman may legally be a member of the Committee of Ten for the Farm Security Administration.

This office has formerly ruled that a community committeeman is not an officer within the contemplation of Article XIV, Section 7, of the North Carolina Constitution. I have consulted Mr. Scott of the AAA and he informs me that he is of the opinion that a school committeeman could be a community committeeman and reporter under the AAA, without violating the prohibition of the Constitution against double office holding.

As to the member of the Committee of Ten for the Farm Security Administration, I consulted Mr. Vance Swift of the Farm Security Administration and he informs me that this Committee is used in a purely advisory capacity and exercises no administrative functions. He is also of the opinion that the members of the Committee are not officers within the meaning of the Constitutional provision prohibiting double office holding.

I am of the opinion, therefore, that neither a community committeeman and reporter under the AAA, nor a member of the Committee of Ten for the Farm Security Administration, is an officer so as to prohibit a school committeeman from holding one of them while he is still a school committeeman.

SCHOOLS; TEACHERS; ELECTION; CONTINUING CONTRACT; RESIGNATION

20 August, 1942.

You state in your letter of August 19 that a teacher in a county administrative unit, who was employed to teach in a school in this unit during last year due to the allotment of teachers by the State School Commission, was notified that she would be transferred to another school in the county, and that she verbally agreed to do this. You further state that she is now attempting to resign in order to secure another position but that she could not now give the proper notice as it is less than thirty days until the schools in the administrative unit begin. You desire to know whether this teacher can resign under the above circumstances without giving thirty days notice prior to the opening of school.

Section 7 of the School Machinery Act of 1939, as amended, provides that the principals of the districts which nominate and the district committees which elect the teachers for all the schools of the districts, subject to the approval of the County Superintendent of Schools and the County Board of Education. It is further provided in this Section

that the distribution of the teachers between the several schools of the district shall be subject to the approval of the County Board of Education.

Under the provisions of the present School Machinery Act, when a teacher is elected and signs a contract, this contract continues from year to year until the teacher is notified, as provided in Section 12 of the School Machinery Act. Section 12 of the School Machinery Act makes it the duty of the County Superintendent in a county administrative unit to notify all teachers by registered letter of their rejection prior to the close of the school term, subject to the allotment of teachers made by the State School Commission. It is also provided in Section 12 that teachers desiring to resign must give not less than thirty days' notice prior to opening of school in which the teacher is employed to the official head of the administrative unit in writing and if the teacher violates this provision, such teacher may be denied the right to further service in the public schools of the State for a period of one year, unless the County Board of Education of the unit wherein the provision was violated waives the penalty by appropriate resolution.

From the above provisions of the School Machinery Act, it appears to me that a teacher is elected by the committee of the district to teach in that particular district and that the distribution of the teachers between the several schools of the district should be made by the local school committee, but this is not effective until it has been approved by the County Board of Education. Of course the whole set up is subject to the allotment of teachers made by the State School Commission.

It is, therefore, my opinion that the contract of the teacher about which you inquire is still in effect and as the allotment of teachers has been made by the State School Commission, the committee in the district in which this teacher was employed would have a right to assign her to any school within the district and if she desired to resign, it would be necessary that she give the thirty-day notice required by Section 12 of the School Machinery Act, unless the local school authorities agreed to release her from her contract or agreed not to invoke the penalties prescribed in Section 12 for the failure to give the proper notice.

SCHOOLS; TEACHERS; RESIGNATION; NOTICE

21 August, 1942.

Receipt is acknowledged of your letter of August 20 enclosing letter from Superintendent J. S. Blair of Bladen County.

On August 15 this office wrote to Superintendent Blair that, under the facts which he presented, it would be necessary that the teacher referred to in his letter give the thirty days' notice required by Section 12 of the School Machinery Act of 1939, as amended, if she desired to resign. Section 12 of the School Machinery Act of 1939, as amended, provides in part that "principals and teachers desiring to resign must give not less than thirty days' notice prior to opening of school in which the teacher or principal is employed to the official head of the administrative unit in writing." Any principal or teacher

violating this provision may be denied the right to further service in the public schools of the State for a period of one year unless the County Board of Education or the Board of Trustees of the administrative unit where this provision was violated waives this penalty by appropriate resolution.

EDUCATION; COMMERCIAL COLLEGES AND BUSINESS SCHOOLS; TEACHING
FIVE OR LESS STUDENTS

12 September, 1942.

I beg to acknowledge receipt of your letter of the 3rd inst., in which you ask for my interpretation of Section 5780(m) (1), relating to commercial colleges and business schools and raise the following questions:

(1) Operator "A" teaches six or more students commercial subjects in her own home. All six students come to her at the same time. None of them have had or taken commercial courses elsewhere.

The section defines an operator of a commercial college or business school as "any person, partnership, etc.," who teaches *publicly*, for compensation, any or all of the branches of stenography, accounting, etc., mentioned in said section, with the proviso that any person or individual who gives instruction in the above subjects to five or less students shall not be construed as the operator of such school.

Since your proposition states that the party in question teaches as many as six students, such person would not come under the proviso. The question left for consideration, then, is whether or not this person teaches *publicly*, for *compensation*, the branches of stenography, etc., enumerated in said section. In my opinion this would depend on whether the teacher in question happens merely to be giving lessons to these six pupils in the teacher's private home, without making any particular arrangements for conducting classes, such as furnishing typewriters and other equipment, or whether such person conducts regular classes in a room set apart and equipped for the teaching of such subjects and charges for such instruction, and has previously had other students or holds him or herself out as a teacher of these subjects.

In my opinion, if such person holds him or herself out as a teacher of the subjects enumerated in the above referred to section for pay and conducts regular classes to six or more students in a room set apart and equipped for the teaching of such subjects, and has conducted classes to other students in the immediate past or holds him or herself out as a teacher to future pupils, such person would come within the definition of Section 5780(m) (1) of the Consolidated Statutes defining what is the operator of a business or commercial school, and he or she would have to secure a permit from the State Board of Commercial Education and otherwise comply with Sections 5780(m) (1) and (m) (2) of the Consolidated Statutes.

(2) The same condition exists, except that three of the students have had commercial courses and are coming to practice and improve their skill in typewriting and shorthand.

It occurs to me the distinction in the situation outlined in proposition No. 1 and this question is that since three of these six pupils have had commercial courses and are coming to this party merely to practice and improve their skill in typewriting and shorthand, that such teacher might be considered as a tutor or one who is merely coaching pupils in reviewing subjects which they have previously studied and completed under some other teacher. From my conversation with you, I assume that this is the situation in this instant case; if so, I am of the opinion that such person would come within the proviso of Section 5780(m)(1), since she would have only three new pupils to teach and would be coaching the other three, and would not have to obtain the license under Section 5780(m)(2).

(3) Operator "C" has more than six students, but not at the same time. She teaches only two or three students at any time during the day. I do not think it would make any difference whether she teaches the pupils one at the time or all of them at the same time, so long as such teacher has six or more regular students, and would come within my opinion expressed as to your first proposition.

(4) Operator "D" has ten clerical workers and stenographers coming to her. She is coaching them to better prepare them for civil service examination.

I think that this question would depend on whether or not the circumstances and conditions existing in this instant case are similar to those existing in connection with question No. 1.

The additional facts to be considered here, it seems to me, are whether the clerical workers and stenographers mentioned had completed business courses under some other teacher and were merely reviewing certain subjects under the direction of the party in question, or whether these persons were taking new courses under the teacher for the purpose of preparing themselves on certain subjects required by the civil service examinations. If you find that the students mentioned in this question are being taught by the teacher under the circumstances and conditions on which I based my opinion under question No. 1, then, in such event, I am of the opinion this teacher would not come under the proviso of Section 5870(m)(1), and would have to comply with Section 5780(m)(2).

NEGROES; PROFESSIONAL EDUCATION; STATE AID

12 October, 1942.

I have your letter of October 8, 1942, in which you request an opinion as to the eligibility of William M. Wilkins, a Negro, for out-of-State aid for the study of medicine.

It appears from the letter of Dr. Shepard that this applicant has already received State aid for two years upon the representation that he was enrolled in a medical school, whereas, in fact, he was taking a pre-medical course. Courses in chemistry and science, which would have prepared him for entrance into a medical school, could have been taken at the North Carolina College for Negroes at Durham,

North Carolina. The applicant now seeks State aid for a medical course in an out-of-State school.

Under Public Laws of 1939, Chapter 65, provision is made for assistance to Negroes engaged in graduate or professional study outside this State only in the event such instruction is not offered at the North Carolina College for Negroes. Since this applicant could have received pre-medical instruction in the North Carolina College for Negroes, I am of the opinion that he was not entitled to the State aid which he has already received. The State aid provided by the statute is intended only to provide educational opportunities for Negroes equal to those offered to whites in State institutions. Since the only medical course in a State institution in this State is a two-year course, the maximum State aid a Negro could receive for the study of medicine would be for two years. This applicant has already received aid for two years, although he used it for a purpose other than the study of medicine. Having upon his representation that he was studying medicine received the maximum amount available for such study, he is not eligible for further aid for the study of medicine.

In connection with the facts of this case, I think it advisable to point out that Public Laws of 1939, Chapter 65, makes the following requirement with reference to students in professional schools who receive State aid:

"It is further provided that the student applying for such admission must furnish proof that he or she has been duly admitted to said recognized professional college."

The authorities at the North Carolina College for Negroes should be very careful to see that the required proof is furnished and that it is of a satisfactory character.

WORKMEN'S COMPENSATION ACT; STATUS OF BUS DRIVERS

16 October, 1942.

I have your letter of October 14, enclosing a letter to you from Mr. Frank B. Aycock, Jr., Superintendent of Currituck County Schools, under date of September 28, asking for an interpretation of Section 22 of the School Machinery Act in its application to bus drivers, a part of whose salaries are paid by the State and a part from local funds.

Mr. Aycock is correct in his understanding that the State is responsible for Workmen's Compensation, on the basis of the average wage of such employees as defined in the Workmen's Compensation Act, as to all employment in connection with the eight months' school term. Should these employees perform any service outside of and not connected with the eight months school term, the State would not be liable for Workmen's Compensation for injuries arising out of and in the course of such outside employment.

SCHOOLS; SUPPLEMENTAL BUDGET FOR UNEXPECTED INCREASES IN
TEACHERS' SALARIES

16 October, 1942.

I have your letter of October 14, enclosing to me a letter to you from Mr. A. H. Hatsell, Superintendent of Onslow County Schools, under date of October 9. I understand from Mr. Hatsell's letter that by reason of the unusual war conditions existing in Onslow County, they find it necessary to supplement substantially teachers' salaries in order to keep their schools in operation, many teachers having resigned on account of the high cost of living in that section. The difficulty now arises because the budget has already been approved and the tax levy made.

Mr. Hatsell inquires whether or not fines, forfeitures, penalties, dog taxes and poll taxes might be used to supplement the teachers' salaries, if approved by the Board of County Commissioners. He also inquires whether a surplus revenue to be derived from the A.B.C. stores in his county and the revenue from the low-cost housing project connected with the Marine Base might be used for this purpose.

It is my opinion that the fines, forfeitures, penalties, dog taxes and poll taxes might be used for this purpose under the provisions of Section 9 of the School Machinery Act, provided the budget had been made up and approved by the State School Commission with this plan in mind. However, this was not done and no taxes have been levied to supply the revenue from this source for maintenance of plant and fixed charges.

It seems to me that the Board of County Commissioners would have the authority to approve a supplemental budget and provide in the resolution that funds necessary to take care of same should be supplied from the excess revenue which is now anticipated from the A.B.C. stores. I understood in conference with you that in addition to the revenue anticipated from the A.B.C. stores, which was included in the calculations involved in the regular budget, it is now anticipated that by reason of the increased population the revenue will greatly exceed that amount. Based upon this anticipation, the Commissioners might, in advance of receiving it, pledge it to the payment of the supplemental budget for the teachers' salaries.

SCHOOL OF LAW; TEACHERS CONTRACTS; NOTICE OF RESIGNATION;
RIGHTS OF PARTIES WHERE TEACHER BREACHES CONTRACT

19 January, 1943.

You enclose a letter from Honorable R. B. Griffin, Superintendent of Person County Schools, in which he raises the question as to the right of a teacher to recover for thirteen days' salary where such teacher resigned in the middle of the term without giving the notice required by the School Machinery Act.

Section 12 of the School Machinery Act, as amended, provides that teachers and principals desiring to resign must give not less than thirty days' notice prior to the opening of school in which the teacher or principal is employed to the official head of the administrative unit in writing. It is further provided in this Section that any principal

or teacher who violates this provision may be denied the right to further service in the public schools of the State for a period of one year unless the County Board of Education or the Board of Trustees of the administrative unit where the provision was violated waives the penalty by appropriate resolution. It is entirely possible that the General Assembly, in enacting Section 12 of the School Machinery Act of 1939, as amended, intended that the penalty provided for therein should be all the disadvantage suffered by a teacher who resigned without complying with the provisions of this section. If this is true, a teacher who resigns without complying with the provisions of Section 12 as to notice should be paid the proportionate part of her salary earned up until the time she stopped teaching.

The question as to whether a person who is under contract to perform personal services and wilfully breaches the contract is entitled to recover on a quantum meruit basis, is a difficult one. The common law rule seems to have been that the unpaid wilful defaulter was not entitled to judicial relief.

In the case of *Britton v. Turner*, 6 N. H. 481, the plaintiff contracted to do farm labor for one year for a total compensation of \$120.00. He quit after 9½ months of performance and the employer suffered no damage as a result of the breach of the contract. The court allowed a recovery of \$95.00 to the defaulting laborer. The courts of this State do not seem to have followed consistently either the common law rule or the rule laid down in the case of *Britton v. Turner*. See Volume 15, North Carolina Law Review, page 261, et seq.

In the case of *Chamblee v. Baker*, 95 N. C. 98, the plaintiff, a farm laborer, was employed under an agreement to extend from February until the end of the year. Seven months later he left without cause and the defendant sustained no damage. The plaintiff was allowed to recover on a quantum meruit basis. In this case, the defendant sustained no damage as a result of the breach of the contract.

In the case of *Lipe v. Citizens Bank and Trust Company*, 206 N. C. 24, there was a contract to perform services for an elderly lady in exchange for a promise to devise all her property to the plaintiff. The lady died leaving an estate valued at approximately \$16,000.00 and devised only \$3,000.00 to plaintiff. The action included counts on the contract and in quantum meruit. There was a finding of fact that plaintiff had not performed his contract, but he was allowed \$3,000.00 in quantum meruit by the lower court. On appeal to the Supreme Court, a new trial was awarded and in the opinion the late Justice Clarkson said in substance that the jury found on the first issue that there was a special contract and on the second issue that it was breached and, that this being true, the fifth issue as to quantum meruit became inoperative. Thus, you can readily see that it is doubtful what the court might hold on the question raised where no damage is suffered by the administrative unit employing the teacher. Of course, if a teacher would be entitled to recover on a quantum meruit basis, the school administrative unit would have a right to set up whatever damages, if any, it sustained as a result of the breach of the contract by the teacher.

SCHOOLS; RIGHT TO PROVIDE EDUCATIONAL SERVICES FOR CHILDREN
UNDER SIX YEARS OF AGE WHERE FUNDS FURNISHED
ENTIRELY BY FEDERAL GOVERNMENT

15 February, 1943.

You inquire as to whether, in my opinion, there could be provided, under the supervision of the public school system of the State, educational services for children under six years of age where the total cost is paid by the Federal Government.

It is my opinion that the above could be done provided the total cost is borne by the Federal Government and that no State or local tax funds are used in the undertaking.

PUBLIC HEALTH; RIGHT OF COUNTY BOARD TO ENACT ORDINANCE
REQUIRING SCHOOL TEACHERS TO BE X-RAYED

22 February, 1943.

You inquire as to whether, in my opinion, the Wilson County Board of Health has the power to enact an ordinance requiring all school teachers of the county to be X-rayed.

I am enclosing herewith copy of a letter dated July 22, 1941, to Dr. Carl V. Reynolds, State Health Officer, on this general subject. The letter to Dr. Reynolds might possibly not apply in the situation about which you inquire as the opinion in that case was based primarily on the fact that the X-ray pictures were to be interpreted by the members of a particular society to the exclusion of all other persons who might be qualified to make such interpretation.

The General Assembly of North Carolina has laid down certain health requirements for teachers, under the provisions of Consolidated Statutes 5556. These requirements do not include X-rays. There might, therefore, be some question as to the right of the County Board of Health to make this requirement under ordinary circumstances. However, if it should appear that the circumstances were such that the preservation of the public health demanded that such steps be taken, such an ordinance might be upheld by the Court.

SCHOOLS; DEAF CHILDREN; ATTENDANCE IN PUBLIC SCHOOLS

3 March, 1943.

You state that a child has been enrolled in one of the public schools in Rowan County and that this child is almost totally deaf and dumb. You desire to know whether the principal has a right to refuse to accept such a child when it is obvious that such child cannot profit by the instruction in the public schools.

Section 5764 of Michie's North Carolina Code of 1939 Annotated provides that every deaf and every blind child of sound mind in North Carolina, between the ages of 7 and 18 years, who shall be qualified for admission into a State school for the deaf or the blind, shall attend a school for the deaf or the blind for a term of nine months each year, and that parents, guardians, or custodians of such a child shall send, or cause to be sent, such child to some school for the instruction of the blind or deaf.

Section 5892 of Michie's North Carolina Code of 1939 Annotated, as amended by Chapter 123 of the Public Laws of 1941, which deals with the North Carolina School for the Deaf at Morganton, provides:

"The board of directors shall, according to such reasonable regulations as it may prescribe, on application, receive into the school for the purposes of education all white deaf children resident of the state, not of confirmed immoral character, nor imbecile, or unsound in mind or incapacitated by physical infirmity for useful instruction, who are between the ages of eight and twenty-three years: Provided, that the board of directors may admit students under the age of eight years when, in its judgment, such admission will be for the best interest of the applicant and the facilities of the school permit such admission. Only those who have been bona fide citizens of North Carolina for a period of two years shall be eligible to and entitled to receive free tuition and maintenance. The board of directors may fix charges and prescribe rules whereby nonresident deaf children may be admitted, but in no event shall the admission of nonresidents in any way prevent the attendance of any eligible deaf child, resident of North Carolina. The board shall provide for the instruction of all pupils in the branches of study now prescribed by law for the public schools of the state and in such other branches as may be of special benefit to the deaf. As soon as practicable, the boys shall be instructed and trained in such mechanical pursuits as may be suited to them, and in practical agriculture and subjects relating thereto; and the girls shall be instructed in sewing, house-keeping, and such arts and industrial branches as may be useful to them in making themselves self-supporting."

It is my opinion, under the law as written, that the child about whom you inquire should attend the North Carolina School for the Deaf at Morganton and that the school authorities in Rowan County would have a right to refuse to admit such child to the public schools of said county.

SCHOOLS; EXCLUSION OF PUPILS ON ACCOUNT OF MARRIAGE

10 March, 1943.

Receipt is acknowledged of your letter of March 8, enclosing a letter from Honorable Robert W. Proctor of Marion, North Carolina, of March 3, in which your opinion is asked as to whether or not the Board of Trustees of the Marion City Administrative Unit has the right to dismiss from school several young couples who were married during the school year, these pupils being about sixteen years of age, upon the grounds that the presence of these young married children in school is detrimental to the welfare of other pupils. He states that in some instances both the wife and the husband are attending school, and, in others, the wife married a soldier but is still attending school, and he inquires if there is any distinction between these cases.

Mr. Proctor, in his letter, refers to C. S. 5563 which provides that a pupil may be suspended who wilfully and persistently violates the rules of the school, or who may be guilty of immoral or disreputable conduct, or who may be a menace to the school. This is the only statute which I find with direct reference to this question.

I am of the opinion that the school authorities would not have the right to dismiss from school the pupils referred to on account of the

fact that they have gotten married during the school term, or to dismiss them entirely on account of the fact of marriage. In any particular case in which it is thought that the conduct of the pupil is such as to make his or her presence in the school a menace to the school, such pupil might be dismissed under authority of C. S. 5563. If the pupils had been lawfully married, the fact of marriage would not, in my opinion, in itself, be sufficient to justify the conclusion that they were a menace to the school. I can well appreciate the difficulties for the school which this situation may produce and the disorganization which might result from it, but, in my opinion, the dismissals must be considered purely from an individual basis and on the facts of any particular case.

TRYON-SALUDA CITY ADMINISTRATIVE SCHOOL UNIT; SUPPLEMENTAL
TAX; EFFECT OF STATE PROVIDING NINTH MONTH TERM

11 May, 1943.

I have your letter of May 8, enclosing the letter of May 6 from Mr. Marcus B. Caldwell, Superintendent of the Tryon-Saluda City Administrative School Unit, in which he writes as follows:

"You will find enclosed a copy of the resolution adopted when our school unit voted a special levy to supplement the eight months school term. We will appreciate it very much if you will have the Attorney General give us a complete ruling on the case as we are of the opinion that the levy is still legal to continue for the betterment of the schools in the unit."

I have examined the extracts from the minutes of the meeting of the Board of the Tryon-Saluda School District under date of April 8, 1937, asking for a special election under Section 14 of the School Machinery Act of 1939. This resolution petitions for an election "submitting to the voters in said territory the question of whether or not a special tax of 25c on the one hundred dollar value of property be levied to supplement the eight months school term in said administrative unit, it being intended that said election shall be ordered and held in accordance with the applicable provisions of law. . . ."

In order to have complete understanding of the matter, it will be necessary to see a copy of the resolution adopted by the Board of County Commissioners in response to this petition, authorizing the election, and also to see the form of the newspaper notice of the election and the form of the ballots. I will say, however, that if the provisions of the resolution of the Board of County Commissioners and the advertisement of the election and the form of the ballot are in keeping with the resolution adopted by the trustees of the School Board, the purposes for which the tax may be levied are not confined to providing for the ninth month of the school term. This question can probably be settled by a conference with the County Attorney and comparison of the resolution adopted by the Board of Trustees of the School Administrative Unit with the other proceedings above referred to.

The amendment to the School Machinery Act adopted in 1943, providing for the State supported school term of 180 days, contains

no provision repealing the authority for the levy of taxes to supplement the funds provided by State support and, of course, the local authorities would not be permitted to provide by taxation any funds for the ninth month of the school term.

Before any such taxes can be levied, however, it will be necessary for the Board of Trustees to make up the budget, designating the purposes for which it will be expended, which budget must be approved by the Board of County Commissioners as the tax levying authority, and also by the State Board of Education.

EDENTON CITY ADMINISTRATIVE UNIT; SUPPLEMENTAL TAX; EFFECT OF
STATE PROVIDING NINTH MONTH TERM

11 May, 1943.

I have your letter of May 8, enclosing a letter from Mr. John A. Holmes, Superintendent in the Edenton City Administrative Unit, and a copy of the resolution adopted by the Board of Trustees of the Edenton City Schools and a copy of the minutes of the Chowan County Board of Commissioners, calling for a special election under the provisions of Section 14 of the School Machinery Act of 1939.

The resolution of the Board of County Commissioners authorizes the election "to determine whether there shall be levied in said territory a tax not exceeding 15c on one hundred dollars valuation of real and personal property to supplement the funds from State or county allotments available to said City Administrative Unit, in order to operate schools of a higher standard than that provided by State support in said Administrative Unit, but in no event to provide for a term of more than 180 days."

The resolution of the Board of Trustees petitioning for the said election is in the same language as that above quoted from the minutes of the Board of County Commissioners.

I agree with you that, under the authority of the election provided for under these resolutions, the taxes voted could be levied for purposes other than the support of the ninth month school term. Before the taxes can be levied, however, it will be necessary for the Board of Trustees of the Edenton Schools, under Section 15 of the School Machinery Act, to make up its budget, setting forth the purposes for which the funds will be used, which budget must be approved by the Board of County Commissioners and the State Board of Education before any taxes therefor can be levied.

SCHOOL LAW; TEACHERS; CONTRACTS; TERMINATION; RESIGNATION

21 May, 1943.

Receipt is acknowledged of your letter of May 19 enclosing a letter from Honorable T. T. Murphy, Superintendent of Pender County Schools, in which he sets out certain facts in connection with a resignation submitted by Mrs. Joe F. Johnson and which, before any action was taken by the proper school authorities, was attempted to be withdrawn. From the letter, it appears that Mrs. Johnson is now

contending that her contract continues and Superintendent Murphy desires an opinion as to whether the contract with Mrs. Johnson is still in effect.

Section 7 of the School Machinery Act of 1939, as amended, provides that principals and teachers shall enter into written contracts upon forms to be furnished by the State Superintendent of Public Instruction and that such contracts shall continue from year to year until such teachers or principals are notified as provided in Section 12 of the Act, as amended. This Section also contains the following proviso:

"Provided, further, that such teacher or principal shall give notice to the Superintendent of Schools of the administrative unit in which said teacher or principal is employed within ten days after the close of school of his or her acceptance of employment for the following year."

Section 12 of the School Machinery Act makes it the duty of the County Superintendent or administrative head of a city administrative unit to notify all teachers and/or principals, by registered letter, of their rejection, prior to the close of the school term, subject to the allotment of teachers made by the State School Commission.

Section 12 further provides that principals and teachers desiring to resign must give not less than thirty days notice prior to the opening of school in which the teacher or principal is employed to the official head of the administrative unit, in writing.

It appears from the letter of Superintendent Murphy that the school committee of the Long Creek-Grady School District held a meeting on April 14, prior to the closing of the school on April 21, and agreed that Mrs. Johnson would not be retained as a teacher in the school system for next year. It further appears that instead of following the statutory procedure as to notification by registered mail, the school committee had the principal to write Mrs. Johnson a letter, suggesting to her that her resignation would be acceptable, rather than for the Superintendent of Public Instruction or the committee to send her a registered notice telling her that she had been rejected.

Pursuant to this request, Mrs. Johnson, on the 15th of April, submitted her resignation. No action seems to have been taken on the resignation, and on April 24 Mrs. Johnson undertook to withdraw the resignation, and now insists that she has a valid contract to teach during the next school year.

Ordinarily, the tender of a resignation is considered as a mere offer to effect a mutual rescission of a contract of employment and is not binding on either party to the contract until its acceptance by the employer. It may be withdrawn at any time before the acceptance takes place.

In the case of *Le Masters v. Board of Education*, 141 S. E. 515, a West Virginia case, it was held that the tender of a so-called resignation by a teacher under contract to teach in a district school, being a mere offer to effect a mutual rescission of a contract of employment, is not binding on either party to the contract until its acceptance by her employer, assembled as a Board, and may be withdrawn at any time before such acceptance takes place.

If there had been no action taken by the school authorities prior to the time Mrs. Johnson submitted her resignation, the rule laid down in the West Virginia case might be applicable. However, as Mrs. Johnson clearly understood at the time she submitted her resignation that the school authorities had already rejected her for employment during the next school year, it is possible that the court might hold that the rescission of the contract of employment was completed at the time Mrs. Johnson submitted her resignation and that no further action was required on the part of the school authorities. It is impossible to predict with any degree of certainty what the court might hold on the facts in this particular case. This office has, in the past, adopted a policy to refrain from giving official opinions on matters which are in dispute when this fact appears in the request unless the request is joined in by all parties concerned. The opinions of this office are advisory only and are not binding on the courts of the State. Under these circumstances, it is doubtful whether you would desire to undertake to give Mr. Murphy any opinion on the question he raises. It seems to me that he should consult the attorney for the Board of Education of Pender County and be guided by whatever advice the attorney for the Board may see fit to furnish.

TRYON-SALUDA CITY ADMINISTRATIVE SCHOOL UNIT; SUPPLEMENTAL
TAX; EFFECT OF STATE PROVIDING NINTH MONTH TERM

4 June, 1943.

I have your letter of June 2, and I have examined a copy of the notice of election and a copy of the resolution adopted by the Board of County Commissioners in regard to the calling and holding of this special election. This notice of election and resolution adopted by the Board of County Commissioners provides for an election to vote on the question of levying a tax of 25c per \$100.00 valuation, for the purpose of supplementing the regular eight months school term.

No limitation is placed upon the purposes for which the taxes may be levied and, therefore, the levying of the tax is not limited to the purpose of providing for the ninth month. The tax up to the amount voted may, therefore, in my opinion, be legally levied by the Board of County Commissioners to provide the sum approved in the supplemental budget approved by the Board of County Commissioners and the State Board of Education.

In Mr. Caldwell's letter, he asked whether or not the County Commissioners can change the rate of tax without permission from the Board of Trustees.

It is within the discretion of the Board of Commissioners as to the amount of tax that they will levy, up to the limit provided for in the election. The Board of Commissioners must approve the budget for supplementing the State and local funds and this gives them control over the amount of tax to be levied to provide therefor.

Mr. Caldwell asks as to whether or not the funds provided in the special election should be spent for the upkeep of buildings.

These funds should not be spent for the upkeep of the buildings, in my opinion. See Section 9 of the School Machinery Act.

CHILD WELFARE; PERMITS TO INDIVIDUALS AND INSTITUTIONS CARING FOR
CHILDREN; ISSUANCE BY STATE BOARD OF CHARITIES
AND PUBLIC WELFARE

10 June, 1943.

In your letter of June 7 you submit a question raised by Honorable W. F. Warren, Superintendent City Schools of Durham, North Carolina, as to whether a person operating a private nursery must have a permit or license for its operation.

Consolidated Statutes, Section 5067, and Section 6 of Chapter 226 of the Public Laws of 1931, provide, in substance, that no individual, agency, voluntary association, or corporation seeking to establish and carry on any kind of business or organization in this state for the purpose of caring for and placing dependent, neglected, abandoned, destitute, orphaned, or delinquent children, *or children separated temporarily from their parents*, shall be permitted to organize and carry on such work without having secured a written permit from the State Board of Charities and Public Welfare.

It is my thought that the nursery school about which Mr. Warren inquires would come within the provisions of the statute. I would, therefore, advise that he communicate with the State Board of Charities and Public Welfare in regard to this matter.

SCHOOLS; DIVISION OF CURRENT EXPENSE FUNDS BETWEEN COUNTY AND
CITY ADMINISTRATIVE UNITS; BUDGET; LEVY

25 June, 1943.

Receipt is acknowledged of your letter of June 24 in which you raise certain questions relative to the budget, levy, and distribution of current expense funds as between a county administrative unit and a city administrative unit located therein.

Your first question is whether the per capita distribution of current expense funds is determined by the budget of the County Board of Education.

The School Machinery Act of 1939, as amended, contemplates that the per capita distribution be determined by the budget of the County Board of Education in so far as it relates to current expense funds. For example, assume that the enrollment in a county administrative unit is 1,000 and that there is a city administrative unit in the county with an enrollment of 1,000. If the County Board of Education requests the Board of County Commissioners to levy \$10,000.00 for current expense and the Board is of the opinion that this amount should be levied for the county administrative unit, this would mean that the county would levy for each pupil in the county administrative unit \$10.00 for current expense purposes. On this basis, in order to place the pupils in the city administrative unit on the same basis as those in the county administrative unit, the Board of County Commissioners would be required to levy \$10,000.00 for the city administrative unit, which would make a total levy of \$20,000.00 to be distributed on a per capita basis as provided in Section 15 of the School Machinery Act.

If the city administrative unit desires more current expense funds than furnished by the levy above referred to, it would be necessary that the funds be provided in the method outlined in Sections 14 and 15 of the School Machinery Act in the form of a special levy on the property of the taxpayers residing within the territorial limits of the city administrative unit.

Your second question is whether the Commissioners are required under the law to distribute exactly the same per capita for current expense purposes to both the county and city administrative units.

Section 15 of the School Machinery Act of 1939, as amended, provides, in part:

"All county-wide current expense school funds shall be apportioned to county and city administrative units monthly and it shall be the duty of the County Treasurer to remit such funds monthly, as collected, to each administrative unit located in said county on a per capita enrollment basis. County-wide expense funds shall include all funds for current expenses levied by the Board of County Commissioners in any county to cover items for current expense purposes and including also all fines, forfeitures, penalties, poll and dog taxes and funds for vocational subjects."

Thus, it will be clearly seen that the law contemplates that exactly the same per capita distribution shall be made both to the county and to any city administrative units located in the county. The Board of County Commissioners of a county would have no right to levy taxes on a county-wide basis to cover additional items of current expense which would not be distributed on a per capita basis to the county and city administrative units. If the city administrative units desire additional funds, it is my opinion that they must be provided by way of a supplemental tax authorized and levied in the manner provided in Sections 14 and 15 of the School Machinery Act.

SCHOOLS; TEACHERS; ASSIGNMENT OF WAGES

6 July, 1943.

You inquire as to whether, in my opinion, school teachers may make a valid assignment of their salary vouchers prior to the time same are issued.

Section 7675(d) of Michie's North Carolina Code of 1939, Annotated, provides as follows:

"All transfers and assignments made of any claim upon the State of North Carolina or any of its departments, bureaus or commissions or upon any State institution or of any part or share thereof or interest therein, whether absolute or conditional and whatever may be the consideration therefor and all powers of attorney, orders or other authorities for receiving payment of any such claim or any part or share thereof, shall be absolutely null and void unless such claim has been duly audited and allowed and the amount due thereon fixed and a warrant for the payment thereof has been issued; and no warrant shall be issued to any assignee of any claim or any part or share thereof or interest therein: *Provided* that this section shall not apply to assignments made in favor of hospitals, building and loan associations, and life

insurance companies: *Provided, further*, that employees of the state or of any of its institutions, departments, bureaus or commissions who are members of the state employees credit union may in writing authorize any periodical payment or obligation to such credit union to be deducted from their salaries or wages as such employee, and such deductions shall be made and paid to said credit union as and when said salaries and wages are payable: *Provided, further*, that this section shall not apply to assignments made by members of the State Highway Patrol, agents of the State Bureau of Investigation, Motor Vehicle Inspectors of the Revenue Department, and State Prison Guards, to the commissioners of the Law Enforcement Officers' Benefit and Retirement Fund in payment of dues due by such persons to such fund."

As school teachers in North Carolina, with the exception of that portion of their salaries represented by local supplements, are paid by the State, it is my opinion that teachers would be prohibited from making assignments of their salaries except under the conditions and for the purposes outlined in the section above quoted. The section certainly, to my mind, would prohibit the type of assignment mentioned in the correspondence from Honorable H. D. Browning, Jr., County Superintendent of Public Instruction of Columbus County.

SCHOOLS; TEACHERS; CONTRACTS; CONTINUATION; NECESSITY FOR
WRITTEN CONTRACTS

23 July, 1943.

You enclosed a letter from Superintendent N. F. Steppe, of the McDowell County Schools, in which he raises the question as to whether a teacher is legally under contract prior to the time a written contract is executed by the teacher and the proper school authorities of the administrative unit in which such teacher is elected.

Prior to the year 1941, it was necessary, under the law, for a teacher to enter into a new contract each year. The General Assembly of 1941 amended Section 7 of the School Machinery Act of 1939, so as to provide that teachers' contracts should continue from year to year until such teachers were notified, as provided in Section 12 of the School Machinery Act, as amended, with a further proviso that teachers must give notice to the superintendent of schools of the administrative unit in which they are employed within ten days of the close of school, or their acceptance of employment for the following year. Section 12 of the School Machinery Act of 1939, as amended, provides in detail the method to be used in terminating teachers contracts. Thus you will see, that once a teacher is under contract, such contract continues from year to year unless terminated in the manner provided in Section 12 of the School Machinery Act, as amended. It is provided in Section 12 of the School Machinery Act, as amended, that a teacher desiring election in a particular administrative unit in which such teacher was not employed during the current year, must file his or her application, in writing, with the county or city superintendent of schools.

Section 7 of the School Machinery Act of 1939, as amended, provides that the principals of the district shall nominate, and the district committees shall elect, the teachers for all the schools of the districts, subject of the approval of the county superintendent of schools and the county board of education. The Section further provides that teachers shall enter into written contracts, upon forms to be furnished by the State Superintendent of Public Instruction, before becoming eligible to receive any payment from State funds, and makes it the duty of the county board of education, in a county administrative unit, and of the governing body of a city administrative unit, to cause written contracts, on forms to be furnished by the State, to be executed by all teachers elected under the provisions of the School Machinery Act, before any salary vouchers shall be paid.

A contract is an agreement, upon sufficient consideration, to do or not to do a particular thing. There is no contract unless the parties assent to the same things in the same sense. A contract results from the concurrence of minds, and its legal consequences are not dependent upon the impressions or understanding of one alone of the parties to it. It is not what either thinks, but what both agree. *Board of Education v. Board of Education*, 217 N. C. 90, 93.

Under the provisions of the School Machinery Act, an applicant for a position as teacher in an administrative unit in which such applicant is not already under contract, must apply, in writing, to the county or city superintendent of schools. The filing of the application by the teacher is, to my mind, nothing more than a notice to the school authorities in the particular administrative unit that the teacher filing the application is available for employment during the ensuing school year, and when the school authorities elect and approve the applicant, this action is to be considered as an offer of employment in the particular administrative unit for the ensuing year; and the contract is made binding only after the teacher has executed the written contract, as provided in the statute. A teacher seeking employment might file an application with the school authorities in several administrative units, and it is possible that the General Assembly had this in mind when the provision was written in the statute making it the duty of the governing body of each administrative unit to require written contracts to be executed on forms to be furnished by the State before any salary vouchers could be paid, or before any teacher would become eligible to receive any payment from State funds. Certainly, it could not be said that a teacher would be required to teach without compensation, and under the provisions of the School Machinery Act, no compensation may be legally paid until a teacher has executed a written contract on the form to be furnished by the State Superintendent of Public Instruction. Once the contract is executed, it continues from year to year until terminated in the manner provided in Section 13 of the School Machinery Act of 1939, as amended.

SCHOOLS; CURRENT EXPENSE FUNDS; CAPITAL OUTLAY FUNDS; BUDGET;
DETERMINATION AS TO WHAT ITEMS INCLUDED IN
CAPITAL OUTLAY AND IN CURRENT EXPENSE

29 July, 1943.

Receipt is acknowledged of your letter of July 26 enclosing letter from Honorable S. G. Chappell, Superintendent of Wilson City Schools, in which he raises three questions.

(1) Does a school board in a county or city administrative unit have the right to place in their Capital Outlay budget, items of current expense, and thus evade the provision of the law quoted above with reference to apportionment on a per capita enrollment basis?

Section 15 of the School Machinery Act of 1939, as amended, provides that all county-wide current expense school funds shall be apportioned to county and city administrative units monthly on a per capita enrollment basis and that county-wide expense funds shall include all funds for current expenses levied by the Board of County Commissioners in any county to cover items for current expense purposes and including all fines, forfeitures, penalties, poll and dog taxes, and funds for vocational subjects.

Section 15 further provides that all county-wide capital outlay school funds shall be apportioned to county and city administrative units on the basis of budgets submitted by said units to the county commissioners and for the amounts and purposes approved by said commissioners.

Section 5596 of Michie's North Carolina Code of 1939, Annotated, sets out in detail what items may be designated as current expense and what items may be designated as capital outlay.

It is my opinion that the county board of education of a county administrative unit and the governing body of a city administrative unit have no right to place in their capital outlay budgets items of current expense and, as the distribution of capital outlay funds is based on budgets submitted by such units to the county commissioners for the amounts and purposes set out in such budgets, the board of county commissioners would have a right to refuse to approve the budgets until such items were removed.

(2) What is the responsibility of the Board of County Commissioners or tax levying authorities in such a case?

As above pointed out, budgets for capital outlay funds must be submitted to the board of county commissioners and the apportionment is based on the amounts and purposes approved by said board.

This being true, it is my opinion that the board of county commissioners should check the capital outlay budget before approving same, in order to determine whether it contains any items which could not properly be designated as capital outlay.

(3) Is an item of painting an old building that has previously been painted an item of capital outlay or an item of current expense?

The current expense fund is composed of various items, one of which is maintenance of plant. This includes repair of buildings, upkeep of grounds, repair and replacement of heating, lighting and

plumbing equipment, instructional apparatus, furniture and other equipment, and other necessary expenses of maintenance. The capital outlay fund is to provide for the purchase of sites, the erection of school buildings, including dormitories and teachers' homes, improvement of new school grounds, alteration and addition to buildings, installation of heating, lighting and plumbing, purchase of furniture, including instructional apparatus for new buildings, office equipment, acquisition of trucks and other vehicles for the transportation of pupils, and other necessary capital outlay.

It is my opinion that painting an old building already in use would be considered as an item of current expense, coming under the heading of maintenance of plant.

SCHOOLS; TEACHERS; ELECTION; TRANSFER FROM ONE POSITION TO ANOTHER IN DISTRICT OR CITY ADMINISTRATIVE UNIT

2 August, 1943.

Receipt is acknowledged of your letter of July 30 in which you raise the question as to whether a teacher may be shifted from one position to another in a city administrative unit or in a particular district within a county administrative unit.

Section 7 of the School Machinery Act of 1939, as amended, relative to the election of teachers in a county administrative unit, provides that the principals of the districts shall nominate and the district committee shall elect the teachers for all the schools of the district, subject to the approval of the county superintendent of schools and the county board of education.

Section 6 of the School Machinery Act provides that the board of trustees or other governing body of a city administrative unit shall elect the teachers on the recommendation of the city superintendent.

Section 12 of the School Machinery Act provides that any teacher desiring election as a teacher in a particular administrative unit, who is not employed by said unit during the current year, shall file his or her application in writing with the county or city superintendent of schools. All teachers are required to enter into a written contract upon forms to be furnished by the state superintendent of public instruction before becoming eligible to receive any payment from State funds, and it is the duty of the county board of education in a county administrative unit and the governing body of a city administrative unit to cause written contracts on the forms to be furnished by the State to be executed by all teachers elected under the provisions of the School Machinery Act before any salary vouchers shall be paid.

In Section 7 of the School Machinery Act, the following provision is found:

"The distribution of the teachers between the several schools of the district shall be subject to the approval of the county board of education."

The contract approved by the State for use in county administrative units provides that the teacher has been selected by the particular school district in the administrative unit and agrees to teach in the public schools of the district for the ensuing school term. The con-

tract approved for use in city administrative units provides that the teacher has been elected in said administrative unit and agrees to teach in the public schools of the unit for the ensuing school term.

It is my opinion that a teacher elected by the committee in a district in a county administrative unit and approved by the county superintendent of public instruction and the county board of education is elected to teach in the schools of that particular district and that the distribution of the teachers between the several schools of the district is a matter to be taken care of by the local committee and the county superintendent of public instruction, subject to the approval of the county board of education.

As to teachers in a city administrative unit, it is my opinion that the matter of the distribution of teachers between the various schools in the city administrative unit is one for consideration and action by the board of trustees or other governing body of the city administrative unit and the city superintendent of schools.

A teacher makes application to teach, is elected, and enters into a written contract to teach in a particular district in a county administrative unit or in the schools of a city administrative unit and such teacher, in my opinion, may be assigned to any school in the particular district or city administrative unit.

SCHOOL LAW; COMPULSORY ATTENDANCE; ATTENDANCE OFFICER;
DEPUTY SHERIFF; DOUBLE OFFICE HOLDING

23 August, 1943.

Receipt is acknowledged of your letter enclosing letter from Honorable C. Reid Ross, County Superintendent of Harnett County Schools, in which he raises the question as to the type of contract which should be entered into with the special attendance officer and whether a deputy sheriff could serve as a special attendance officer.

By virtue of Chapter 270 of the Public Laws of 1939, the General Assembly has provided that the County Board of Education in a county administrative unit and the Board of Trustees in a city administrative unit may employ special attendance officers.

It is my opinion that it was the purpose and intent of the General Assembly, in enacting the above chapter, to authorize the appointment of attendance officers who would be directly responsible to the appointing board and a part of the educational system of the unit employing such officers. I do not think that it was the intention of the General Assembly to authorize a Board of Education to add additional duties to a deputy sheriff.

This office has heretofore held that a deputy sheriff is an officer within the meaning of Article 14, Section 7, of the Constitution of North Carolina, which prohibits double office holding. From an inspection of the statute authorizing the employment of special attendance officers, it is my opinion that the Supreme Court might be justified in holding that an attendance officer employed under the provisions of the chapter above referred to might also be considered as an officer within the meaning of Article 14, Section 7, of the Constitution. It is therefore my opinion that a County Board of Education

would not be authorized to designate a deputy sheriff as a special attendance officer. It is further my opinion that a special attendance officer, when employed by a County Board of Education, should take the same oath as any other public officer of the county.

SCHOOLS; ELECTION OF TEACHERS; DISTRIBUTION BETWEEN SEVERAL SCHOOLS OF DISTRICT; ALLOTMENT BY STATE BOARD OF EDUCATION

23 August, 1943.

Receipt is acknowledged of your letter enclosing letter from Honorable Sloane W. Payne, Superintendent of Schools of Alexander County, in which he raises the question as to the distribution of teachers between the several schools of the district and whether the election of teachers is subject to the allotment of teachers made by the State Board of Education.

Section 7 of the School Machinery Act of 1939, as amended, provides that the principals of the district shall nominate and the district committee shall elect the teachers for all the schools of the district, subject to the approval of the County Superintendent of Schools and the County Board of Education. It is further provided in this section that the distribution of the teachers between the several schools of the district shall be subject to the approval of the County Board of Education.

A teacher is required to enter into a written contract upon a form to be furnished by the State Superintendent of Public Instruction and this contract continues from year to year until such teacher is notified, as provided in Section 12 of the School Machinery Act of 1939, as amended. Section 12 provides that it shall be the duty of the County Superintendent or administrative head of a city administrative unit to notify all teachers and/or principals now or hereafter employed, by registered letter, of his or her rejection, prior to the close of the school term, subject to the allotment of teachers made by the State Board of Education.

It therefore appears to me that all teachers' contracts are subject to the allotment of teachers made by the State Board of Education and that the distribution of teachers elected in a particular school district in a county is a matter for the local school authorities, subject to the approval of the County Board of Education.

SCHOOLS; COMPULSORY ATTENDANCE LAW; DISMISSAL OF PUPILS;
MENTALLY DEFECTIVE PUPILS

2 September, 1943.

Receipt is acknowledged of your letter of August 31 enclosing a letter from Mr. J. H. Burnette of Burgaw, North Carolina. You desire to know what discretion, in my opinion, a principal or teacher has in judging whether or not a child should remain in school.

It seems to me that the compulsory attendance law contemplates that all children in North Carolina between certain ages should receive some type of training. The type of school in which such training is to be received is, to my mind, determined by the mental or physical

condition of the particular child in question. If the child is a normal, healthy child, it should attend the public schools or a school which is included in the definition of "school" as contained in Section 5757 of Michie's North Carolina Code of 1939, Annotated.

Section 5767 of Michie's Code provides:

"It shall be the duty of the superintendent to report through proper legal channels the names and addresses of parents, guardians, or custodians, of deaf, dumb, blind, and feeble minded children to the institution provided for each, and upon the failure of the county superintendent to make such reports, he shall be fined \$5.00 for each child of the class mentioned above not so reported."

Section 5567 authorizes physical examination of pupils attending the schools of the State. If a child is not found to be feeble minded or physically defective, to such an extent that the instruction of such child is provided for by the State of North Carolina otherwise than in the public schools, it is my thought that such child should be accepted in the public schools of this State and would be subject to discipline in the school which such child attends.

Of course, Section 5563 of Michie's North Carolina Code of 1939, Annotated, provides that a teacher in a school having no principal or the principal of a school shall have authority to suspend any pupil who wilfully and persistently violates the rules of the schools or who may be guilty of immoral or disreputable conduct or who may be a menace to the school. This section further provides that every suspension for cause shall be reported at once to the attendance officer, who shall investigate the cause and shall deal with the offender, in accordance with rules governing and attendance of children in schools.

It is therefore my opinion that unless the child about which Mr. Burnett inquires is a feeble minded child, the school authorities should accept the pupil and undertake to subject her to the discipline of the school and should only dismiss her if she comes within the purview of Section 5563 above referred to.

SCHOOL LAW; SEPARATION OF RACES; INDIANS

8 September, 1943.

Receipt is acknowledged of your letter of September 3 enclosing letter from Superintendent H. D. Browning, Jr., of the Columbus County Schools, in which he raises the question as to whether an Indian child may enroll in the white schools of Columbus County.

I assume from Superintendent Browning's letter that the child referred to is a descendant of the Croatan tribe or what was formerly known as the Croatan Indian tribe. Section 5384 of Michie's North Carolina Code of 1939, Annotated, provides in part:

"All white children shall be taught in the public schools provided for the white race, and all colored children shall be taught in the public schools provided for the colored race; but no child with Negro blood, or what is generally known as Croatan Indian blood, in his veins, shall attend a school for the white race, and no such child shall be considered a white child."

The provisions of the statute above referred to would clearly prohibit the attendance of the child about which Superintendent Browning inquires in a white school in Columbus County. It is clear, to my mind, that the Indians designated in the school law could attend neither the white nor the colored schools nor could white persons or persons of Negro blood attend the schools of such Indians. The matter of working out the accommodations for the various races is one of an administrative nature which should be worked out by the local authorities under the supervision of your Department.

SCHOOLS; TRANSFER OF PUPILS FROM ONE ADMINISTRATIVE UNIT OR DISTRICT TO ANOTHER ADMINISTRATIVE UNIT OR DISTRICT; PROCEDURE

8 September, 1943.

Receipt is acknowledged of your letter of September 7 enclosing a letter from Superintendent S. Ray Lowder of the Lincolnton City Schools, in which he raises the question as to whether it is permissible for children to change districts if agreeable to both schools involved or whether the agreement must have the approval of the State Board of Education.

Section 5 of the School Machinery Act of 1939, as amended, provides, in part:

"It shall be within the discretion of the State Board of Education, wherever it shall appear to be more economical for the efficient operation of the schools, to transfer children living in one administrative unit or district to another administrative unit or district for the full term of such school without the payment of tuition: Provided, that sufficient space is available in the buildings of such unit or district to which the said children are transferred: Provided further, the provision as to the nonpayment of tuition shall not apply to children who have not been transferred as set out in this section."

The above portion of the School Machinery Act seems to definitely settle Superintendent Lowder's question.

SCHOOLS; TEACHERS; SICK LEAVE; RIGHT TO DECLARE POSITION VACANT WHERE TEACHER UNABLE TO PERFORM DUTIES

6 October, 1943.

Receipt is acknowledged of your letter of October 2 enclosing letter from Honorable M. T. Lambeth, Superintendent of the Thomasville City Schools, in which it is stated that two of the teachers in the Negro high school in Thomasville are expecting shortly to have babies. It is further stated that these teachers seem to think they should be allowed to hire substitutes for a few weeks, pay them a substitute's salary, and draw the difference themselves, until they can return to work in from four to six weeks. Mr. Lambeth desires to know whether these teachers should be allowed to pursue the course they desire or whether the local school authorities would have a right to replace them for the remainder of the school year.

Section 22 of the School Machinery Act of 1939, as amended, provides that the State Board of Education is authorized and em-

powered in its discretion to make provision for sick leave with pay for any teacher or principal, not exceeding five days, and to promulgate rules and regulations providing for necessary substitutes on account of said sick leave. The section further provides that the pay for a substitute shall not be less than \$3.00 per day.

I assume that the teachers in the city administrative unit of Thomasville signed the standard form contract, which provides, in part:

"That said teacher or principal, having been elected in said administrative unit, agrees to teach in the public schools of said administrative unit for the ensuing school term, to discharge faithfully all the duties imposed on teachers by the public laws of North Carolina and by the rules and regulations of the governing authority of said administrative unit."

The matter of sick leave, beyond that provided for in Section 22 of the School Machinery Act, is one for the local school authorities.

If a teacher who has signed the type of contract above referred to becomes unable to teach and to discharge the duties imposed on teachers by the public laws of this State and the rules and regulations of the governing authority of the administrative unit in which such teacher is employed, it is my thought that if the disability is of a permanent nature or is of a nature which would in reality prevent the teacher from performing her duties in a satisfactory manner, the governing body of the city administrative unit would have the right to declare the position vacant and employ another teacher. Of course, if the governing body of the administrative unit has adopted a policy relative to sick leave which goes beyond that allowed by Section 22 of the School Machinery Act, a teacher would have the right to retain her position and employ a substitute during the period allowed by such rule or regulation, and the governing body would not be authorized during such period to undertake to declare the position vacant and employ another teacher.

In addition to what I have said above, I wish to call your attention to Section 12 of the School Machinery Act, which provides, in part:

"In the employment of teachers, no rule shall be made or enforced which discriminates with respect to sex, marriage, or non-marriage of applicant."

Of course, any rule or regulation adopted by the governing body of the administrative unit relative to sick leave, applicable to all teachers, could not be construed so as to amount to discrimination against married teachers.

BOARD OF EDUCATION; SALE OF SCHOOL HOUSE PROPERTY

13 October, 1943.

I acknowledge receipt of your letter, enclosing letter from Superintendent T. T. Murphy, Pender County Schools, Burgaw, North Carolina, setting out certain facts relative to the desire of the Board of Education of Pender County to either sell or lease a three room school house in the Watha School District. He inquires as to whether or not

this school property may be sold at private sale for the purposes and on the conditions set out in his letter, or if the property may be leased.

I know of no objection to the Board of Education of Pender County leasing this property if it finds that the property is not necessary in conducting the schools of the County.

As to the sale of the property, I refer you to Section 5470, subsections (a) and (b). I know of no authority to sell school property at private sale. The only statutory authority for the sale of school property is Section 5470(a), which requires school property to be sold at public auction after advertising the property for the period of time and in the manner prescribed for sale of real estate under deeds of trust.

However, Section 5470(b) provides that after the sale of property has been held as provided in Section 5470(a), and upon finding that the property at such sale brought an inadequate price, the Board of Education may refuse to confirm the sale and may later sell it at private sale if a larger sum is offered than at the public sale.

SCHOOLS; MAINTAINING DISCIPLINE ON SCHOOL BUSES

23 October, 1943.

I acknowledge receipt of your letter, enclosing a letter from Superintendent E. E. Sams of Lenoir County Public Schools, in which he sets out in detail the facts and circumstances surrounding an altercation which took place on school bus No. 62, driven by Dorothy Ree Harper.

It seems to me that the school authorities have responsibility of maintaining discipline on the school buses similar to the responsibility of maintaining discipline on the school campus during recess and periods immediately preceding the opening of school and immediately after the closing of school, while the pupils are congregated on the school grounds.

Under the facts and circumstances set out in Superintendent Sams' letter, it seems that he would not only be justified, but I think it is his duty to see that necessary steps are taken leading to the prosecution of the guilty parties in bringing about and entering into the affray on the bus. I do not think it necessary to employ private counsel to prosecute the defendants, but suggest that he turn the matter over to the Solicitor of the Recorder's Court for prosecution.

PUBLIC HEALTH; SCHOOLS; COMPULSORY VACCINATION FOR SMALLPOX AND DIPHTHERIA

18 November, 1943.

Receipt is acknowledged of your letter enclosing letter from Superintendent James E. Holmes of the Leaksville Public Schools, in which he inquires as to his authority and duty with reference to the enforcement of a rule which the Board of Health of Rockingham County has made requiring all pupils in Rockingham County Schools to be immunized against smallpox and diphtheria.

Section 7162 of Michie's North Carolina Code of 1939, Annotated, vests discretion in the county board of health to impose the requirement that children attending the public schools present certificates of immunity from smallpox either through recent vaccination or previous attack of the disease. It is further provided in this section that if any parent, guardian, school committee, principal or teacher shall permit a child to violate such a requirement of the aforesaid authorities, he or she shall be guilty of a misdemeanor and fined not less than \$10 nor more than \$50. This statute has been upheld by our Supreme Court in the case of *Hutchins v. School Committee*, 137 N. C. 68, and in the case of *Morgan v. Stewart*, 144 N. C. 424. A similar statute has been upheld in the Supreme Court of the United States in the case of *Jacobson v. Moss*, 197 U. S. 10, 49 L. Ed. 643. See also *Zucht v. King*, 260 U. S. 174, 67 L. Ed. 194.

Section 7169(1) of Michie's North Carolina Code of 1939, Annotated, provides for the immunization of children against diphtheria. Among other things, the section provides that the certificate of immunization shall be presented to school authorities upon admission to any public, private, or parochial school in North Carolina. A willful violation of this section constitutes a misdemeanor, punishable by a fine of not more than \$50 or by imprisonment for not more than 30 days, in the discretion of the court. There is a proviso added to this section to the effect that it shall not apply to children whose parent or parents or guardians are bona fide members of a religious organization whose teachings are contrary to the practices herein required and no certificate for admission to any public, private, or parochial school shall be required as to them.

Section 5545 of Michie's Code provides, "It shall be the duty of teachers, principals, superintendent, committee, and all other governing boards having authority over the maintenance, support, and conduct of a public school to obey the rules and regulations of the sanitary committee or board of health for the protection of health in the districts."

SCHOOLS; COMPULSORY ATTENDANCE; AGE LIMIT

7 December, 1943.

Receipt is acknowledged of your letter of December 1 enclosing letter from Honorable Horace Sisk, Superintendent of the Fayetteville City Schools, in which he raises the question as to the enforcement of the compulsory attendance law against the child who becomes 14 years of age after the school term has started.

The first sentence of Section 5757 of Michie's North Carolina Code of 1939, Annotated, is as follows:

"Every parent, guardian or other person in the state having charge or control of a child between the ages of 7 and 14 years shall cause such child to attend school continuously for a period equal to the time which the public school in the district in which the child resides shall be in session."

It could be argued that the Legislature had in mind, when it used the language above quoted, to require the attendance of a child who was less than 14 years of age at the beginning of the school term

during the whole term, even though such child should reach his or her fourteenth birthday before the expiration of the school term. However, the failure to comply with the provisions of the compulsory attendance law is made a criminal offense and parents are subject to indictment for the failure to comply with the provisions of the law relating to compulsory attendance. Statutes creating criminal offenses are strictly construed by the courts and, with this principle in mind, I have serious doubts as to whether the courts in this state would sustain a conviction where the evidence showed that the child in question had become 14 years of age prior to the date specified in the warrant or indictment, even though the child was less than 14 years of age at the beginning of the school term.

The Supreme Court of North Carolina does not seem to have passed upon this particular phase of the compulsory attendance law. Of course, the opinions of this office are advisory only and are not binding on the courts.

SCHOOLS; COMPULSORY ATTENDANCE; ENFORCEMENT; JUVENILE
COURTS; PROCEDURE

6 January, 1944.

Receipt is acknowledged of your letter of January 3 enclosing letter from Superintendent A. W. Honeycutt of the Chapel Hill schools. You desire that this office give an opinion on two questions raised in Mr. Honeycutt's letter.

The first question is, "Does a special attendance officer have authority to pick up a child out of school and deliver him to the principal of his or her respective school?"

It is provided in Section 115-304 of the General Statutes of North Carolina (formerly C. S., 5759, as amended) that the county board of education in a county administrative unit and the board of trustees in a city administrative unit may employ special attendance officers to be paid from funds derived from fines, forfeitures and penalties, or other local funds, and that said officers shall have full authority to prosecute for violations of this article. The section further provides that in any unit where a special attendance officer is employed, the duties of chief attendance officer or truant officer in so far as they relate to such unit shall be transferred from the county superintendent of public welfare to the special attendance officer of said unit. Thus, you will see that if the procedure outlined in this section is followed, the duties in connection with the enforcement of the compulsory attendance law would be transferred to the special attendance officer or officers and they would be clothed with such authority as is given attendance or truant officers under the law.

It will be noted that under the provisions of Section 115-303 of the General Statutes of North Carolina (formerly C. S., 5758, as amended) the State Board of Education is required to formulate such rules and regulations as may be necessary for the proper enforcement of the compulsory attendance law and the board is required to prescribe what shall constitute truancy. This section makes it the duty of all

school officials to carry out the instructions of the state board of education and the failure to do so is made a misdemeanor.

Under the provisions of Section 115-306 (formerly C. S. 5761, as amended) the county superintendent of public welfare or chief school attendance officer or truant officer is required to investigate and prosecute all violators of the compulsory attendance law and reports of unlawful absence are required to be made by the teachers and principals to the chief attendance officer.

I do not find any specific statute which would tend to authorize an attendance officer to arrest a child who is out of school without the service of some process issued by the juvenile court. It is my thought that the attendance officer would be authorized to request a child who is out of school to accompany the attendance officer to the school and, in attempting to secure the return of the child, to use the art of persuasion, but I am definitely of the opinion that the attendance officer would not be authorized to arrest the child or use any physical force in securing the child's return to school.

Under the provisions of Section 110-21 of the General Statutes of North Carolina (formerly C. S. 5039) the juvenile court has exclusive jurisdiction of the case of a child less than 16 years of age who is truant, and the judge of the juvenile court would be authorized to issue the proper process to bring the child before the juvenile court.

Your second question is, "What is the procedure in taking the child before a juvenile court judge?"

Section 110-25 of the General Statutes of North Carolina (formerly C. S. 5043) provides that any person having knowledge or information that a child is within the provisions of the juvenile court act and subject to the jurisdiction of the court may file with the court a petition verified by affidavit stating the alleged facts which bring such child within such provisions. The parties must set forth the name and residence of the child and of the parents, or the name and residence of the person having the guardianship, custody, or supervision of such child, if the same be known, or ascertained, by the petitioner, or the petition shall state that they are unknown if that be the fact.

Section 110-26 (formerly C. S. 5044) provides that upon the filing of the petition or upon the taking of a child into custody, the court may forthwith or after an investigation by a probation officer or other person, cause to be issued a summons, signed by the judge or the clerk of the court, directed to the child and to the parent or other person standing in the relation of parent requiring them to appear with the child at the time and place stated in the summons to show cause why the child should not be dealt with according to the provisions of the juvenile court act.

Section 110-28 (formerly C. S. 5046) provides for the service of the summons and further provides that in case the summons cannot be served or the party served fails to obey the same and in any case when it is made to appear to the court that summons will be ineffectual or that the welfare of the child requires that he shall be

brought forthwith into the custody of the court, a warrant may be issued on order of the court either against the parent or person standing in the relation of parent or against the child himself, and the sheriff or other lawful officer of the county in which the action is taken is required to serve all papers as directed by the court, but the papers may be served by any person delegated by the court for that purpose.

SCHOOLS; MENTALLY DEFECTIVE PUPILS; DISMISSAL

26 January, 1944.

Receipt is acknowledged of your letter of January 24 enclosing letter from Superintendent C. G. Credle of the Oxford City Schools, in which he desires to know the proper course to pursue in handling a child who is attending the public schools but, in the opinion of the school authorities, is mentally defective.

Section 115-303 of the General Statutes of North Carolina (C. S. 5758), which is a portion of the compulsory attendance law, provides that in the case of feeble minded children, the teacher shall designate the same in her reports to the county superintendent of public welfare and that it shall be his duty to report all such cases to the State Board of Charities and Public Welfare, whereupon said Board shall make or cause to be made an examination to ascertain the mental incapacity of the child and report the same to the county or city superintendent involved. Upon receipt of this report the local school authorities are authorized, under such limitations and rules as the State Board of Education may adopt, to exclude such child from the public school, when it is ascertained that the child cannot benefit by said instruction and his presence becomes a source of disturbance to the rest of the children. It is further provided that in all such cases in which a child is excluded from school, a complete record of the whole transaction shall be filed in the office of the county or city superintendent and kept as a public record.

It appears to me that if the principal and teacher are of the opinion that a child is feeble minded to such an extent as to make it impossible for such child to profit by the instruction given in the school, the course outlined in the section above referred to should be followed.

I also refer you to Section 115-145 of the General Statutes of North Carolina (C. S. 5563) which provides:

"A teacher in a school having no principal, or the principal of a school, shall have authority to suspend any pupil who willfully and persistently violates the rules of the school or who may be guilty of immoral or disreputable conduct, or who may be a menace to the school. But every suspension for cause shall be reported at once to the attendance officer who shall investigate the cause and shall deal with the offender in accordance with rules governing the attendance of children in school."

Of course, this section would not be applicable to a case in which the sole complaint was the fact that the child was feeble minded and unable to benefit from the instruction given in the school.

DEEDS; ESTATES; FORFEITURES; CONDITIONS SUBSEQUENT

18 February, 1944.

I acknowledge receipt of your letter enclosing a letter from Superintendent T. T. Murphy, Superintendent of Schools of Pender County, in which he sets out that a deed held by the County School Board contains the following provision at the end of the description:

"To have and to hold the aforesaid tract or parcel of land, and all privileges and appurtenances thereto belonging, to said County Board of Education and their successors in office, to their only use and behoof For Educational Purposes Only."

Superintendent Murphy states that there is a building upon the property which is no longer needed for school purposes, which the Board would like to sell, and inquires as to whether or not, in view of the quoted provision in the deed, sale of the building might be legally made.

Since the condition set forth in the deed in question does not constitute a condition subsequent with a clause of reverter and does not arise by clear implication, I am of the opinion that the Board of Education of Pender County may dispose of the property in question.

I base my opinion upon the holding of our Court in the case of *Hall v. Quinn*, 190 N. C. 325. In this case a deed executed to the trustees of the James Sprunt Institute contained the following language:

"To be used for the purposes of education, and for no other purposes."

It will be noted that the language contained in that deed is far more favorable to the plaintiff than that contained in the Pender County deed, yet our Court held that the deed conveyed to the trustees an estate in fee, holding:

"A clause in a deed will not be construed as a condition subsequent unless it expresses in apt and appropriate language the intention of the parties to this effect and a mere statement of the purpose for which the property is to be used is not sufficient to create such a condition."

See also the case of *Shields v. Harris*, 190 N. C. 520, in which the Court upheld a deed containing the following language:

"In trust that they shall appropriate and set apart said piece or parcel of land as a burying ground for the use of the Methodist Episcopal Church, and further, that the said Andrew Fountain shall have the full and free privilege of interring in said graveyard all his relations and such other as he may think proper."

SCHOOLS; VOCATIONAL AGRICULTURE; CANNERIES; HOUSING;
CAPITAL OUTLAY

25 February, 1944.

I have your letter of February 23, in which you write me as follows:

"As a part of war emergency training program in the field of agriculture, the Federal Government has made available substantial sums of money for the purchase of canning equipment for canneries to be a part of our vocational agriculture equipment. The program is a very urgent one and involves a definite tie-up with our agricultural educational program. I am, therefore, submitting to you the following question:

"If a cannery is a part of the vocational equipment in a duly established vocational program in a public school, and if the use of such canning equipment becomes a part of the vocational training of the students involved, both in the regular day school and in our part-time and evening classroom work, upon my certification that such instruction is a part of the program for the constitutional six-months school term, would boards of commissioners be authorized and empowered to provide the funds necessary for the housing of this equipment as they now provide funds for the housing of other educational activities in a public school?"

The School Machinery Act, Section 9, provides that the tax levying authorities in any county administrative unit, with the approval of the State Board of Education, may levy taxes to provide necessary funds for teaching vocational agriculture and home economics and trades and industrial vocational subjects supported in part from Federal vocational educational funds.

When a cannery is used as a part of the vocational equipment in a duly established vocational program in the public schools, I am of the opinion that the tax levying authority for the administrative unit would have the authority to provide for the capital outlay necessary for housing this equipment, in the same manner and to the same extent that it could provide for capital outlay for other buildings necessary for the constitutional six months school term. The use of this equipment would be as much a part of the school program as any other school activity when it has been adopted in a manner provided by statute.

SCHOOL LAW; LITERARY FUND; SPECIAL BUILDING FUND; REPAYMENT BY
COUNTIES OF LOANS; REFUNDING PLAN

28 February, 1944.

Receipt is acknowledged of your letter of February 25 enclosing letter from Hon. Brandon P. Hodges, County Attorney for Buncombe County, in which he proposes to settle the balance of \$57,000 due on the Special Building and Literary Fund notes issued by Buncombe, for the sum of \$35,000 in cash. You desire to know whether, in my opinion, this settlement would be permissible under the law if the State Board of Education should see fit to entertain such a proposition.

Sections 115-215 and 115-216 of the General Statutes of North Carolina (Ch. 399 Public Laws 1935), authorize the State Board of Education to accept funding or refunding bonds or notes of a

county in payment of interest on or the principal of notes evidencing loans from the State Literary Fund or the Special Building Fund where the county authorizes the issuance of bonds for the purpose of funding or refunding interest on or the principal of all or a part of the notes evidencing such indebtedness provided the issuance of the funding or refunding bonds are approved by the Local Government Commission.

It is further provided that where the funding or refunding of interest on or the principal of the notes constitutes a part of a refunding plan or program of the county, and the terms of such funding or refunding shall be accepted by a sufficient number of the holders of the county's obligations to put same into effect, the State Board of Education may authorize the acceptance of such funding or refunding bonds or notes upon the same terms and conditions, both as to principal and interest, as have been agreed upon by a sufficient number of the other holders of the county's obligations to put same into effect.

It appears from Mr. Hodges' letter, that some seven years ago the notes in question were refunded as a part of Buncombe County's general refunding plan. Although it now appears that the debt settlement is likely to fail and that the county will be unable to meet its obligations, there is now no new refunding plan in progress or under consideration. It necessarily follows that the provisions contained in the statutes above referred to would have no application to the proposition under consideration. The proposal of Buncombe County narrows itself down to a proposition to liquidate \$57,000 of indebtedness by the payment of \$35,000 in cash.

In the discussion of this proposition, it is necessary to take into consideration the question as to whether the State Board of Education has the inherent power to make a settlement of this nature. In the limited time in which I have had to consider the question, it has been impossible for me to make a detailed investigation of the authorities on the subject. In 59 C. J. 169, it is said, "Except so far as restrained by her constitution, a state has power through her agents to make an amicable settlement or adjustment with her debtors, and the legislature may release a debt due to the state, unless such release is prohibited by the constitution."

In the case of *Northern Cent. Railway Co. v. Hering*, a Maryland case reported in 48 Atl. 461, the court held that the state and a corporation indebted to it, might make a contract releasing such indebtedness on consideration of the payment of an annuity to the state. The case was taken to the U. S. Supreme Court, where it was dismissed for the want of jurisdiction (See 186 U. S. 480).

The General Assembly of North Carolina, in setting up the machinery for making loans from the Literary Fund and the Special Building Fund, provided a method of collection, which gives the state, through its treasurer, what might properly be defined as a first lien on all the school funds of the county until the amount due on the indebtedness to the Literary and Special Building Funds is paid in full. With this in mind, it might follow that the General Assembly, in enacting the statutes authorizing the participation in refunding

plans, had in mind that the State Board of Education in the absence of legislative authority did not have the right to adjust indebtedness by counties to the state on account of loans made from the funds above mentioned, and that legislative authority was necessary in order to justify the State Board of Education in following such course. It is also clear that the General Assembly deemed it advisable that any attempted adjustment should be approved by the Local Government Commission.

Of course if the State Board of Education should decide to entertain the proposition made by Buncombe County, it would be necessary to first consider whether the full amount of the indebtedness could be collected, and this, of course, would be a matter to be passed upon by the Board, with the thought in mind that it is dealing with a revolving fund set up for the benefit of all the counties in the state. If the Board should decide that an adjustment is necessary and proper, it is my thought that the matter should be referred to the Local Government Commission for its consideration, and if the Local Government Commission should act favorably on the proposed adjustment, that the matter be submitted to the court for approval before the adjustment is finally consummated. I make this suggestion in view of what was said by the court in *Weaver v. Hampton*, 204 N. C. 42, where the power of the county commissioners of a county to assent to the entry of a consent judgment in an action pending against the county was considered. The Court, in the opinion written by Justice Brogden, said, in part:

"The Circuit Court of Appeals for the Fourth Circuit in *Board of Commissioners v. Tollman*, 145 Fed., 753, recognized and sanctioned the right of county commissioners to compromise law suits. The Court said: 'Again, the power to sue and to defend suits carries with it, by necessary implication, the power to make bona fide compromise adjustments of such suits.' It has been generally recognized as a sound principle of law that counties are empowered to arbitrate controversies arising in the exercise of corporate powers. The authorities are assembled in *West v. Coos County*, 237 Pac., 961, 40 A.L.R., 1362, and annotation."

SCHOOLS; MENTALLY DEFECTIVE PUPILS; DISMISSAL

4 March, 1944.

Receipt is acknowledged of your letter enclosing communication from Superintendent J. M. Moore of the Winston-Salem Public Schools, in which he desires information in regard to handling a child who is mentally defective but is attending the public schools.

Section 115-303 of the General Statutes of North Carolina (C. S. 5758), which is a portion of the compulsory attendance law, provides that in the case of feeble-minded children, the teacher shall designate the same in her reports to the county superintendent of public welfare and that it shall be his duty to report all such cases to the State Board of Charities and Public Welfare, whereupon said board shall make or cause to be made an examination to ascertain the mental incapacity of the child and report the same to the county or city superintendent involved. Upon receipt of this report, the local school authorities

are authorized, under such limitations and rules as the State Board of Education may adopt, to exclude such child from the public school when it is ascertained that the child cannot profit by said instruction and his presence becomes a source of disturbance to the rest of the children. It is further provided that in all such cases in which a child is excluded from the school, a complete record of the whole transaction shall be filed in the office of the county or city superintendent and kept as a public record.

I am not advised as to whether the State Board of Education has adopted any rules and regulations relative to the exclusion of children of this type from the public schools. Of course if there are any such rules and regulations you are acquainted with them.

It is my opinion that local school authorities in undertaking to exclude a child under the provisions of the statute above referred to should be very careful in seeing that every provision of the statute is strictly complied with before any action is taken toward the dismissal of a pupil. If there are any rules which have been adopted by the State Board of Education, these rules should be strictly followed by the local school authorities in taking action after receipt of the report from the State Board of Charities and Public Welfare. If there are no such rules and regulations, it is my opinion that the local school authorities should adopt an order or resolution fully finding the facts and ordering the child's dismissal.

In the preparation and adoption of the order of dismissal I would advise that the local school authorities be governed by the advice of their attorney. It is very important that all the necessary precautions be taken in a matter of this kind.

SCHOOLS; WORKMENS COMPENSATION ACT; LIABILITY OF SCHOOL AUTHORITIES

29 March, 1944.

You have forwarded to this office a letter from Honorable H. D. Browning, Jr., Superintendent of Schools of Columbus County, in which he states that there is being constructed a cannery building with funds secured from public subscription, a federal grant and a small contribution from the county board of education. It is further stated that no written approval for the construction of the building has been given by the county board of education or the local school committee and that the only approval given is by the principal and the teacher of agriculture. The construction work is being done by the students enrolled in high school, under the supervision of the teacher of agriculture. You desire to know whether, in my opinion, if an accident occurred in the construction of said building wherein a student of said school is injured or killed, any question of workmens' compensation liability would arise.

Section 22 of the School Machinery Act of 1939, as amended, makes the provisions of the Workmens' Compensation Act applicable to all school employees and requires the State Board of Education to make arrangements to carry out the provisions of the Workmens'

Compensation Act applicable to such employees as are paid from State school funds. The liability of the State is confined to school employees paid by the State from State school funds for injuries or death caused by accident arising out of and in the course of their employment in connection with the State-operated nine months school term, except the State is made liable for compensation on the basis of the average weekly wage whether all of the compensation for the nine months school term is paid from State funds or in part supplemented by local funds. The county and city administrative units are made liable for workmens' compensation for school employees whose salaries or wages are paid by such local units from local funds and for school employees employed in connection with teaching vocational agriculture, home economics, trades, and industrial vocational subjects supported in part by State and federal funds, which liability shall cover the entire period of the service of such employee. The section contains a proviso to the effect that it shall not apply to any person, firm or corporation making voluntary contributions to schools for any purpose and that such person, firm, or corporation shall not be liable for the payment of any sum of money under this Act.

In order to determine whether there would be any liability under the provisions of the Workmens' Compensation Act, it would be necessary to know whether the construction work was being done by the students under a contract of employment for which compensation was paid or whether it was being done by the students as a part of the instructional program of the school. In order for any liability to arise under the provisions of the Workmens' Compensation Act, it is necessary that there be an employment. *Borders v. Cline*, 212 N. C. 472.

If there is an employment within the meaning of the Workmens' Compensation Act, it is my opinion that the county administrative unit would be held liable under the provisions of Section 22 of the School Machinery Act. On the other hand, if there is no contract of employment and the work is being done purely as a part of the instructional program of the school, it is my opinion that there would be no liability for workmens' compensation. In no event would the State Board of Education, in my opinion, be liable.

In the second situation outlined in Superintendent Browning's letter, it is clearly stated that there is no contract of employment and, if this is true, there would be no liability for workmens' compensation. It is my thought that Superintendent Browning should thoroughly check the facts relative to these propositions and, after having done so, should submit them to the county attorney or attorney for the county board of education and be guided by his opinion in the matter. The question of liability under the Workmens' Compensation Act must of necessity be determined by the facts in each particular case and you can readily see that this office can only lay down general principles and cannot undertake to anticipate the facts as they might arise in each particular case.

SCHOOLS; COUNTY BOARD OF EDUCATION; MEMBERSHIP; VACANCIES IN
OFFICE; LEAVE OF ABSENCE

3 April, 1944.

Receipt is acknowledged of your letter of April 1 enclosing letter from Mrs. Edna G. Rhodes, Superintendent of Schools of Madison County, in which it is stated that one member of the board of education of Madison County would be inducted into the armed forces within the next three or four weeks and a request is made as to the proper procedure to be followed in filling the vacancy.

If the member of the board of education who is being inducted into the armed forces of the United States desires a leave of absence, it would be necessary that Section 2 of Chapter 121 of the Public Laws of 1941 be followed. This section provides that any elective or appointive county official may obtain leave of absence from his duties for military or naval service for such period as the board of county commissioners may designate, such leave to be obtained only upon application by the official and with the consent of the board of county commissioners. The period of leave does not operate to extend the term of the office of the official beyond the period for which he was elected or appointed and if, by reason of the length of the period of absence or the nature of the duties of the official the board of county commissioners deems it necessary, it may appoint any qualified citizen of the county as acting official or substitute for the period of the official's leave of absence.

If the vacancy is created by means of a resignation or means other than the application for a leave of absence, such vacancy would be filled under the provisions of Section 115-42 of the General Statutes of North Carolina (C. S. 5416) which provides that vacancies in the membership of the county board of education by death, resignation or otherwise shall be filled by the action of the county executive committee of the political party of the member causing such vacancy until the meeting of the next regular session of the General Assembly and then by that body for the residue of the unexpired term. If the vacancy to be filled by the General Assembly in such cases occurs before the primary or convention held in the county, then and in that event nominations for such vacancies shall be made in the primary or convention. This section further provides that all vacancies that are not filled by the county executive committee within thirty days from the occurrence of the vacancy shall be filled by appointment by the State Board of Education.

SCHOOLS; TEACHERS; DISMISSAL

26 April, 1944.

Receipt is acknowledged of your letter of April 24 enclosing letter from Superintendent J. O. Bowman of the Anson County Schools, in which he raises the question as to whether the principal or local school authorities have the right to impose fines or other penalties on a teacher who is continually or habitually tardy in beginning her school work.

I am unable to find any provision in the school law which to my mind would authorize the principal or local school authorities to impose fines or other penalties on account of the failure of a teacher to properly perform her duties as provided in her contract of employment. It is my opinion that the only authority given the local school authorities would be suspension under the provisions of G. S. 115-117 or dismissal under the provisions of G. S. 115-143. In case of the suspension or dismissal of a teacher it would be necessary that the procedure outlined in the above sections be strictly followed.

SCHOOLS; PROPERTY; RIGHT TO LEASE

26 April, 1944.

Receipt is acknowledged of your letter of April 24 enclosing letter from Superintendent J. S. Edwards of the Montgomery County Schools, in which he raises the question as to the right of the Board of Education of Montgomery County to execute a long-term lease on a portion of the school property held by the Board of Education for the purpose of installing a potato curing plant.

On January 20, 1938, this office, in a letter to Honorable R. L. McMillan, Attorney-at-Law of Raleigh, North Carolina, in discussing the right of school authorities to lease school property, used the following language:

"It is questionable in my mind whether the authority to sell property particularly restricted by the provision that it must be sold by auction would be held to include the power to lease it. I am inclined to think that it is the policy of the State to give to the Board of Education, or if that power be extended to the Trustees of a special charter district, only the power to sell the property, and it is not the policy of the State to permit the continued holding and leasing of such property after its use for school purposes has been abandoned or discontinued.

"Neither the Board of Education nor a special charter district hold a beneficial interest in the school property, and there are not the same implications as to their power over property which might follow private ownership.

"In my opinion, in the absence of a statute providing that they may deal with the property in this way, that is, lease the same, they have no authority to do so. If we might imply the power to lease from the ownership of the property and loss by reason of its non-use, the power to sell also might have been thus implied, and yet the Legislature found it necessary to clothe the Board of Education with such power by statutory enactment."

On June 14, 1940, in a letter to you, the conclusion reached in the letter to Mr. McMillan was followed and in so doing, the following language was used:

"It also appears that there is no statute giving the County Board of Education the power to lease unused public school property. This office has previously expressed the opinion that the authority to sell property, restricted by the requirement that it must be sold by auction, would not include the right to lease it."

I do not feel that the office would be justified at this time in changing the conclusions reached in the two letters above referred to.

SCHOOLS; TEACHERS' CONTRACTS; CONTINUATION

13 June, 1944.

Receipt is acknowledged of your letter enclosing a letter with enclosures from Superintendent C. A. Furr of Cabarrus County. Superintendent Furr raises the question as to whether Mr. J. C. Baucom has a valid contract for the next school year. It appears that on or about April 25, three members of the local school board of the Hartsell District met in the office of the Cabarrus County Board of Education and discussed certain problems that had arisen at the Hartsell School concerning Mr. Baucom, the principal, and two of his teachers. At this meeting, it was suggested that the Superintendent of Cabarrus County Schools notify Mr. Baucom and two of his teachers, Mrs. J. C. Baucom and Mrs. J. A. Lee, that the Hartsell School Board was asking for their voluntary resignations. The Superintendent notified Mr. Baucom, Mrs. Baucom and Mrs. Lee verbally of the Board's decision. A hearing was requested by the principal and teachers affected and this hearing was held on Monday, May 1.

At this hearing, Mrs. Baucom asked for a complimentary reelection which was granted by the Board, and Mr. Baucom asked that his contract be continued since no charges were preferred against him. On Tuesday, May 2, the Hartsell School Board met in the office of the County Board of Education and at this meeting a motion was made that Mrs. Baucom be given a complimentary reelection and that she resign by Thursday, May 4, which was passed by unanimous vote. A motion was made that Mr. Baucom's contract be continued for the year 1944-45, which was approved by a three-to-one decision of the Board, and Mr. Baucom was notified of this decision. On Thursday, May 4, the Cabarrus County Board of Education held a meeting and at this meeting a motion was made that Mr. J. C. Baucom's contract be revoked by the Cabarrus County Board of Education. No second was made to this motion and therefore no action was taken. On Friday, May 5, the County Superintendent was given a written statement, signed by the Secretary of the Hartsell School Board, to the effect that the contracts of Mr. Baucom, Mrs. Baucom and Mrs. Lee were revoked. The question as to Mr. Baucom's contract was submitted to Messrs. Hartsell and Hartsell, Attorneys-at-Law, of Concord, North Carolina, attorneys for the Cabarrus County Board of Education, and an opinion was given to the County Board of Education by Messrs. Hartsell and Hartsell to the effect that Mr. Baucom has a valid contract for the school year 1944-1945. You now desire to have my opinion on the question.

Prior to the year 1941, it was necessary under the school law for a teacher to enter into a new contract each year. The General Assembly of 1941 amended Section 7 of the School Machinery Act of 1939 so as to provide that principals' and teachers' contracts should continue from year to year until such principals and teachers were notified as provided in Section 12 of the School Machinery Act, as amended.

Section 12 of the School Machinery Act, as amended, provides in detail the method to be used in terminating the contract of a principal or teacher. Thus, you can readily see that once a principal or teacher is under contract, such contract continues from year to year unless terminated in the manner provided in Section 12 of the Machinery Act, as amended. A contract is an agreement, upon sufficient consideration, to do or not to do a particular thing. A contract results from the concurrence of the mind and its legal consequences are not dependent upon the impressions or understanding of one alone of the parties to it. It is not what either thinks but what both agree. *Board of Education v. Board of Education*, 217 N. C. 90.

The Committee of the Hartsell School District, after a hearing at which Mr. Baucom was present, agreed to continue Mr. Baucom's contract and he was so notified. By this action, it is my opinion that the Committee of the Hartsell School District made a valid contract with Mr. Baucom to continue his contract of employment during the school year 1944-1945, subject to the approval of the County Board of Education and the County Superintendent of Schools. There is nothing in the statement of facts submitted by Superintendent Furr which would indicate that either he or the County Board of Education raised any objection to the continuation of Mr. Baucom's contract but, on the contrary, it appears that a motion was made in the meeting of the County Board that Mr. Baucom's contract be revoked and that no second was made to this motion which, to my mind, places the County Board of Education on record as approving the continuation of the contract. It further appears that the County Superintendent notified Mr. Baucom of the continuation of his contract which at least carries with it an implied approval. Under all of these facts and circumstances, it is my opinion that the conclusion reached by Messrs. Hartsell and Hartsell, Attorneys for the County Board of Education of Cabarrus County, to the effect that Mr. Baucom has a valid contract for the school year 1944-1945, is correct.

Of course, you understand that the opinions of the Attorney General are advisory only and are not binding on the courts of this State.

APPROPRIATIONS; SCHOOLS; CONTINGENCY AND EMERGENCY FUND;
ALLOTMENT FOR PURPOSE DENIED BY GENERAL ASSEMBLY

23 June, 1944.

Receipt is acknowledged of your letter of June 23 in which you state that you submitted a request to the General Assembly for an appropriation of \$19,000 in connection with the operation of a health project which is partly financed by State funds and in part from other funds. Included in the \$19,000 was a specific item of \$5,000 with which to pay the salary of the person who heads the program. The General Assembly struck out this particular item and made an appropriation of only \$14,000. You desire to know whether, in my opinion, it would be legal for the Council of State, upon the Governor's recommendation, to make an appropriation from the contingency and

emergency fund covering the amount of the salary of the head of the program for the period beginning July 1, 1944.

Section 1 of Chapter 530 of the Session Laws of 1943, which provides appropriations for the maintenance of the State's departments, bureaus, institutions and agencies, sets up a contingency and emergency fund the purpose of which is to provide for contingency and emergency expenditures for any purpose authorized by law for which no specific appropriation is made or for which inadvertently an insufficient appropriation has been made. From your letter, it appears that the item in which you are interested was considered by the General Assembly and specifically denied. This being true, it is my opinion that this particular item would not come within the meaning of the language used by the General Assembly in setting up the contingency and emergency fund and that the Council of State, upon the Governor's recommendation, would not be authorized to make an appropriation from the contingency and emergency fund for this particular purpose.

OPINIONS TO COMMISSIONER OF REVENUE

SECTION 318½; DISALLOWANCE OF INTEREST PAID BY SUBSIDIARY TO PARENT CORPORATION WHERE LOAN IS GUARANTEED BY PARENT

2 July, 1942.

You inquire whether the Department of Revenue is required to disallow, as a deduction for income tax purposes, interest paid by a subsidiary to a parent corporation under the following facts and circumstances.

The parent corporation and its subsidiaries are engaged in a seasonal industry and pursuant to the government's efforts to stabilize employment the parent and its subsidiaries enlarged their facilities and entered upon a twelve months manufacturing program. In order to carry out this plan large seasonal loans were necessary. The parent corporation arranged with certain banks for the necessary loans. The banks loaned the money to the parent, which, in turn, loaned said borrowed funds to its various subsidiaries. Interest paid to the parent was immediately transferred to the lending banks. The only asset of the parent is the stock of the subsidiaries and this method of financing was resorted to because the consolidated statements of parent and subsidiaries offered a sounder credit base and there was a better control of loans. One of the subsidiaries now contends that you should allow it to deduct on its income tax return interest paid the parent under this arrangement.

I am of the opinion that this interest is not deductible. Section 318½ of the Revenue Act of 1939, as amended by Public Laws 1941, Chapter 50, Section 5(f), is, in part, as follows:

"If the capital of any such subsidiary or affiliated corporation which is not required to file a consolidated return as above provided is inadequate for its business needs apart from credit extended or indebtedness guaranteed by the parent or affiliated corporation, the commissioner shall, in determining the net income of such corporation, disregard its indebtedness owed to or guaranteed by the parent or affiliated corporation in determining the net income taxable under this article. The capital stock for the purposes of this section shall be deemed inadequate to the extent that additional loans, credits, goods, supplies or other capital of whatsoever nature is furnished by the parent or affiliated corporation."

It will be noted that this section requires a disallowance of an interest deduction not only when the parent corporation has made a loan of its funds to the subsidiary, but also where the indebtedness has been *guaranteed* by the parent. In the case you present the parent guaranteed the indebtedness which was the basis of the loan to the subsidiary and to hold that the interest on this indebtedness is deductible would be to ignore plain wording of the statute.

TAXABILITY OF INCOME RECEIVED BY NON-RESIDENT BENEFICIARY FROM
TRUST ADMINISTERED BY RESIDENT FIDUCIARY WHEN
SUCH INCOME IS DERIVED FROM FOREIGN
DIVIDENDS OR FOREIGN RENTS

3 July, 1942.

You have requested my opinion on the question whether the State may tax net income received by a non-resident beneficiary from a trust administered in this state by a resident trustee, when the source of the income distributed by the trustee is dividends received by the fiduciary from stocks in foreign corporations. The same question arises where the source of the income is rents from lands without the state, or other sources which would render the income non-taxable by this State if it were paid from the source directly to the nonresident, rather than through the medium of the North Carolina trust.

It is unnecessary to consider the constitutional validity of such taxation in view of the wording of the North Carolina statutes.

Section 315 of the Revenue Act of 1939, as amended, imposes an income tax upon "resident fiduciaries having in charge funds or property for the benefit of a resident of this State, and/or income earned in this State for the benefit of a non-resident, . . . with respect to: (a) That part of the net income of estates or trusts which has not become distributable during the income year. . . ."

The income that has become distributable during the income year is taxed to the beneficiaries to whom it is distributable.

Section 310 imposes a tax "upon income earned within the state of every nonresident having a business or agency in this state or income from property owned and from every business, trade, profession or occupation carried on in this state. . . ."

The very broad wording of Section 317, defining "gross income," must, as to nonresidents, be limited by the language of Section 310 dealing specifically with the taxation of nonresidents. We must therefore inquire whether the nonresident beneficiary has earned income in the state through a business or agency in the state, or from a business, trade, profession or occupation carried on in the state, or from business owned in this State.

It is elementary that the beneficiary of a trust does not own the corpus of the trust, the legal title thereof being in the trustee, but only the beneficial or equitable interest arising out of the trust according to its terms. I am of the opinion that the mere fact that the nonresident beneficiary has the right to receive income from a trust administered in this state by a resident fiduciary does not bring that income within the purview of Sec. 310. Such income obviously cannot be said to have been earned from a business or agency in the state, or from a business, trade, profession or occupation carried on in the state.

It might be contended that this income is earned from property owned in this state in that the beneficial interest of the nonresident is localized at the domicile of the trust, and thus is property owned

in this State. However, I am of the opinion that the statutory reference to "property owned in this state" was not intended to cover the mere beneficial interest of a nonresident beneficiary in a trust administered in this state.

TAXATION; SALES TAX; COLLECTION; REMEDIES AGAINST
MEMBER OF PARTNERSHIP

1 July, 1942.

By letter of June 23, 1942, my opinion has been requested as to the remedies for the collection of sales tax owed by Mr. William Mallos under the following circumstances. Mr. Mallos formerly operated a place of business in Raleigh, North Carolina, known as Bill's Place. This place of business was closed by Mr. Mallos, leaving \$68.96 for sales tax due and unpaid. Mr. Mallos now operates another cafe in conjunction with a partner. Enforcement of the claim for sales tax against the new business or against Mr. Mallos' interest in it is contemplated.

I have no information which would indicate that the property of Mr. Mallos' new partnership was acquired from the business which he formerly operated. Of course, if a stock of goods used in his former business was transferred to the new business, it would be subject to the lien for sales tax under Section 416 of the Revenue Act in spite of the transfer. If the property of the new partnership was not already subject to a lien for taxes when acquired, the remedies of the State in making this property available for the satisfaction of Mr. Mallos' personal liability for sales tax incurred in operating a previous business is to be determined under the Uniform Partnership Act, Public Laws of 1941, Chapter 374.

In Section 25 of Public Laws of 1941, Chapter 374, it is provided that: "a partner's right in specific partnership property is not subject to attachment or execution, except on a claim against the partnership." This section seems to foreclose the possibility of levying upon specific property of the partnership and selling it under execution in order to enforce the individual liability of Mr. Mallos for sales tax. However, provision is made elsewhere in the Act for subjecting an individual partner's interest in the partnership, which is defined in Section 26 as his share in the profits and surplus, to the claims of his personal creditors. Under Section 28 a judgment creditor of a partner may apply to the court which rendered judgment for an order making the judgment a charge on the partner's interest in the partnership. A receiver may be appointed to receive the partners share in the profits and to apply this share of the profits to the satisfaction of the judgment debt. The partner's interest may also be sold under the direction of the court, and if it is sold, the purchaser may, if he desires, have the partnership dissolved under Section 32 and its assets distributed.

If it should be decided to proceed against Mr. Mallos' interest in the new partnership, the Commissioner of Revenue should first have a certificate of tax liability setting forth the particulars of the

taxpayer's indebtedness docketed in the Superior Court in accordance with paragraph 3 of Section 913 of the Revenue Act. Thereafter a motion should be made in the Superior Court for an order charging the partner's interest in the partnership with the tax and for the appointment of a receiver or the sale of the partner's interest.

INHERITANCE TAX; EXEMPTION OF PROCEEDS OF CERTAIN INSURANCE
POLICIES; ESTATE OF MAURICE FRIEDMAN

21 August, 1942.

You have referred to me your file in the above entitled matter with the request that I advise you whether the proceeds of the insurance policies upon the life of Maurice Friedman are exempt from inheritance taxation against Mr. Friedman's estate by virtue of the recent decision of the Supreme Court in the case of Wachovia Bank & Trust Co., Executor and Trustee v. Maxwell, 221 N. C. 528.

In two of the policies the insured had made his wife the irrevocable beneficiary and had provided for certain contingent beneficiaries in the event that his wife was not living at the time of his death, or if she died before receiving complete payment under the contract. These policies provided that the insured, with the consent of the irrevocable beneficiary, should have the right to exercise any privilege granted by the policies. In the third policy the insured made his wife the irrevocable beneficiary. The designation of the irrevocable beneficiary contains no restriction or limitation upon the right of the insured to exercise any of the other privileges conferred by the policy. This policy (the Metropolitan) specifically provides in Paragraph 6, under "Provisions and Benefits," as follows:

"In the event of the death of any beneficiary before the insured the interest of such beneficiary shall vest in the insured unless otherwise provided herein or indorsed hereon."

I have found nothing in this policy to change this provision. Therefore, under this policy there was a possibility that the insured would receive the proceeds of the policy.

In summary it appears that the insured had divested himself in these policies of one incident of ownership—namely the right to change the beneficiary. The insured had not divested himself absolutely of other rights, privileges, and incidents of ownership in these policies. He could still borrow against the policies and could still surrender them for their cash value. The fact that his wife's consent was required in two of the policies does not alter the fact that he had a possibility of exercising these rights and privileges by obtaining her consent. Further, under one of the policies there was a possibility that the entire proceeds would revert to him. In my opinion these facts clearly distinguish this case from the Wachovia Bank case, for in that case it was stipulated that the insured retained no incidents of ownership whatsoever. In that case, 221 at 532, the court says:

"Clearly then under the express terms of the statute something must pass to the living from the dead. There must be some shifting of economic benefits from the dead to the living. This means,

when applied to insurance policies, that the person whose life was insured must have some legal interest, some incident of ownership, which passed to the living, or some power of appointment (such as the power to change the beneficiary) which terminated at his death. There must be a 'transfer' as defined in Section 1, upon which the tax operates. Thus it is written in the statute.

"When the property passes through a failure to exercise a power of appointment or other incident of control or disposition of the benefit, termination of the power of control at the time of the death inures to the benefit of him who owns the property subject to the power and thus brings about, at death, the completion of that shifting of the economic benefits of property which is the real subject of the tax, just as effectively as would its exercise, which later may be subject to a privilege tax."

Under this rule so long as any right, privilege or incident of ownership whatsoever remains in the insured there is a transfer from him at death which makes the proceeds subject to inheritance taxation. For example, in *Helvering v. Hallock*, 309 U. S. 106, the court upheld a tax on the sole ground that the decedent had reserved a right of reverter, one of the most remote and least substantial types of property.

I conclude that Mr. Friedman had not divested himself of all incidents of ownership, as had the insured in the *Wachovia Bank* case, in the policies in question and that their proceeds are, therefore, subject to inheritance taxation.

REVENUE ACT; SECTION 160; MARBLE YARDS; LIABILITY FOR TAX ON
DISPLAY YARD

24 August, 1942.

You request my opinion upon the liability of a taxpayer for a privilege license under Section 160 of the Revenue Act upon the following facts:

Taxpayer operates in the City of Raleigh a marble yard at which he manufactures and sells monuments, grave stones, and articles of like kind. He also maintains in the City of Rocky Mount a yard or place where samples are kept continuously on display. Taxpayer keeps an agent stationed at said yard and the agent has a telephone. Persons interested in purchasing the products sold by taxpayer may come to his yard in Rocky Mount, examine the samples, and place an order with taxpayer in Raleigh for one of taxpayer's products. Taxpayer does no manufacturing or processing of the products at Rocky Mount but only at Raleigh. If the order is filed for a customer in Rocky Mount taxpayer erects the monument in Rocky Mount.

Section 160 of the Revenue Act provides in part as follows:

"Every person, firm, or corporation engaged in the business of manufacturing, erecting, jobbing, selling or offering for sale monuments, marble tablets, gravestones or articles of like kind, or if a non-resident, selling and erecting monuments, marble tablets, or gravestones at retail shall apply for and obtain from the Commissioner of Revenue a State license for the privilege of engaging in such business in this State, . . ."

I am of the opinion that the taxpayer is liable for a privilege tax on account of the maintenance of the Rocky Mount yard. If he may not be said to be selling monuments in Rocky Mount he is clearly offering them for sale and erecting them. The statute does not require that all the elements enumerated be present in any one case. If any one or more of the elements are present liability for the tax accrues.

INCOME TAX; DEDUCTIONS; RIGHT TO DEDUCT AMOUNT OF INCOME
PAID TO FEDERAL GOVERNMENT ON STATE RETURN

28 August, 1942.

You have referred to me a brief filed by the Arkansas Fuel Oil Company in support of its contention that you should allow as a deduction upon its income tax return the amount of income tax which it has paid the Federal Government. You request my opinion upon the soundness of the taxpayer's contentions.

In my opinion the requested deduction is not allowable. The general purpose of Schedule D of the Revenue Act, as set forth in Section 301, is to tax "net income." Section 316 defines "net income" to mean gross income less the deductions allowed by the income tax article. Section 322, Subsection 4, specifically exempts from taxes which may be allowed as deductions "income taxes." This provision has been carried in the Revenue Acts of the State for almost twenty years, and has received the consistent and uniform construction by both the Department of Revenue and the Attorney General of applying to both Federal and State income taxes. Thus, the General Assembly has acquiesced for a long period of time in a construction to the effect that federal income taxes are not deductible. It is a well established rule of law that the administrative construction is entitled to weight, *Cannon v. Maxwell*, 205 N. C. 420, particularly when made on the advice of the Attorney General. *Hannah v. Commissioners*, 176 N. C. 395; *Powell v. Maxwell*, 216 N. C. 211. Further, Section 933 of the Revenue Act makes it the duty of the Commissioner of Revenue to construe all Sections of that Act and "such decisions by the Commissioner of Revenue shall be prima facie correct, and a protection to the officers and taxpayers affected thereby."

Taxpayer contends that if the statute means what the Department construes it to mean it is unconstitutional. However, acts of the General Assembly are presumed to be constitutional, *Hammond v. McRae*, 182 N. C. 747; *Driscoll v. Edison Light and Power Company*, 307 U. S. 104, and as an officer of the State you are required to accept this presumption. In my opinion the statute does not conflict with Article 5, Section 3, of the State Constitution which specifically provides that "there may be allowed other deductions . . . so that only net incomes are taxed." I think that this provision empowers the General Assembly to provide for deductions which it deems wise and thus write within certain limitations its own definition of net income.

ESTATE OF FLORENCE CHAPIN TYLER; COMPUTATION OF INHERITANCE
TAX WHERE PAYMENT OF FEDERAL ESTATE TAXES LEAVES NO
FUNDS TO PAY CERTAIN LEGACIES

24 September, 1942.

You have requested my opinion upon the proper method of computing the state inheritance tax levied by Schedule A of the Revenue Act in the above entitled estate. By her will the testatrix made three bequests, which disposed of most of her estate, and then provided that after their payment specified sums should be paid from her estate to other designated legatees. It now appears that after payment of the federal estate taxes, there will be nothing left to pay most of the secondary legatees. The executor contends that you should exclude from the inheritance tax base these funds which are paid out in federal taxes and which hence are not paid over to the secondary legatees. The question is whether his contention is sound.

It is well established that the North Carolina inheritance tax is not a tax upon property, but upon the right to acquire it by descent or testamentary gift. *Hagood v. Doughton*, 195 N. C. 811. The tax is levied against the beneficiary for the privilege of receiving property, although the statute makes it the duty of the personal representative to pay the tax as a means of expediting the administration of the law. See Revenue Act, Section 16. The theory of our tax is thus different from that of the federal estate tax, which is an excise tax levied upon the transfer of the net estate. Internal Revenue Code, Chapter 3, as amended.

Section 7(e) of the Revenue Act provides that in determining the clear market value of property taxed under the Inheritance Tax Article, a deduction shall be allowed of "the net amount of federal estate taxes as finally assessed under the Revenue Act of one thousand nine hundred and twenty-six," but that "no deduction shall be allowed for federal estate taxes levied by subsequent acts and amendments." The effect of this provision is that only a portion of the total Federal estate tax is deductible in computing the North Carolina inheritance tax, *Harwood v. Maxwell*, 213 N. C. 55, and that the state inheritance tax is measured in part by property which is not received by the beneficiaries.

While North Carolina allows partial deduction of federal estate taxes, some states allow no deduction at all. Annotation, 31 A. L. R. 993; 44 A. L. R. 1461; 28 Am. Jur. Sec. 251.

It has been held that a provision denying the deduction of federal estate taxes before computing state taxes is valid. *Frick v. Pennsylvania*, 268 U. S. 473; *Stebbins v. Riley*, 268 U. S. 137; *Estate of L. Nieman*, 230 Wisc. 23, 283 N. W. 452; *Re Clark*, 105 Mont. 401, 74 P. (2d) 401, 114 A. L. R. 496.

In the *Frick* case, it was held that neither the United States nor the State is under any constitutional obligation, in determining the amount of its tax, to make any deduction on account of the tax of the other, but that the matter of making a deduction rests in the legislative discretion.

In the Nieman and Clark cases, it was specifically held that an inheritance tax law which requires the tax to be computed upon the amount of decedent's property without the deduction of the amount of the Federal estate tax paid is not for that reason unconstitutional as imposing a tax upon the right to receive something which in fact is never received.

In the Clark case the Court said:

"The cross-appellants argue that our construction of the inheritance tax statutes in our original opinion, to the effect that the amount of the federal estate tax paid may not be deducted and that the amount of the inheritance tax may be computed in accordance with this construction, renders the act unconstitutional, in that a tax is imposed upon the right to receive something which in fact is never received; namely, the amount of property or money necessary to pay the federal estate tax. . . .

"The contention of counsel would be pertinent here if our tax were a tax upon the property instead of upon the right to receive. The inclusion of the property or money which is consumed in the payment of the federal estate tax in computing the tax is not imposing a tax upon the right to receive that particular property, but it is the imposition of the tax upon the right to receive the property which the beneficiaries actually receive."

The constitutional objections have been answered in many of the cases by the proposition that "an inheritance tax is not a property tax, but is eventually a tax upon the statutory privilege of testamentary transfer or succession, and the state, in extending the privilege, may place such limitation upon it as it deems proper in the way of burdens upon its existence." See Annotation, 31 A. L. R. 992, 993; *Re Walkinson*, 217 Pac. 1073.

From these authorities it is clearly apparent that the amount paid out for federal estate taxes need not be deducted from the tax base so long as the beneficiary receives some property or benefit from the estate. However, in the situation under consideration, the beneficiaries concerned receive nothing.

It cannot even be said that they momentarily or theoretically receive the amount of the federal estate taxes. The personal property passed to the executor upon the death of the testatrix. See *Foster v. Cook*, 8 N. C. 509; *Whit v. Ray*, 26 N. C. 14; and *Varner v. Johnson*, 112 N. C. 570. Both the state inheritance tax and the federal estate tax accrue as of the date of death. See Revenue Act, Section 14; I. R. C., Section 827 and Reg. 105, Section 81.85. Under Section 147 of Michie's 1939 N. C. Code, it is provided that legacies may be recovered from an executor after the lapse of two years from his qualification unless he shall have sooner filed his final account for settlement. This necessarily implies that the legatee does not acquire any title to his legacy until two years from the date of qualification unless the executor shall have sooner filed his final account. The final account cannot be filed until federal estate taxes have been paid. Hence it cannot be said that the legatee actually comes into possession, even momentarily, of the amount paid out as federal estate taxes.

I am of the opinion that a construction that would require the computation of the tax upon the amount paid out in federal estate taxes under the peculiar facts of this case would be invalid. These legatees receive nothing whatsoever from the estate because of the provisions of the will directing that other legacies be paid before theirs, and they cannot be taxed for a privilege which it is impossible for them to exercise.

It is important to note that if, under the will, the legacies were of equal rank, so that the payment of the federal estate taxes would reduce all legacies ratably, instead of having the practical effect of wiping out the secondary legacies, a different result would obtain.

INCOME TAXES; PERSONAL EXEMPTION OF MARRIED WOMAN

9 October, 1942.

You have referred to this office your correspondence with Mrs. Nancy F. LeBrun with the request that I advise you upon the proper interpretation of the provisions of Schedule D of the Revenue Act with respect to the requirements imposed upon married women for filing income tax returns.

In taxpayer's letter of October 2 she refers to the provision of Section 326, requiring a return of "every resident . . . having a net income . . . of two thousand dollars (\$2,000.00) or over, if married and living with husband or wife. . . ."

It is true that if this provision is insulated from the remaining provisions of Schedule D, and considered alone, it lends support to taxpayer's position. However, as long as the State has levied an income tax the construction has been that a married woman who cannot qualify as "head of a household" under Section 324(1)(b) is entitled to a personal exemption of only \$1,000.00, and must file a return if her net income exceeds that figure. The provision which you point out is clearly an inadvertence and is being pointed out for legislative correction by the next General Assembly. Section 324(1)(c) specifically grants a married woman having a separate and independent income a personal exemption of \$1,000.00.

While the provision of Section 326 introduces confusion into the statute, I must advise that in view of Section 324(1)(c) and in view of the uniform construction of this act for many years, the correct interpretation is that a married woman having a separate and independent income is entitled to a personal exemption of only \$1,000.00. As a matter of law the continued departmental construction is entitled to weight. *Cannon v. Maxwell*, 205 N. C. 420. Section 933 of the Revenue Act provides that it shall be the duty of the Commissioner to construe all sections of the Act, and that his construction shall be *prima facie* correct. Further, the fact that the legislature has, over a great period of time, acquiesced in the Commissioner's view on this matter indicates its approval of that construction.

REFUND OF BEVERAGE CROWN TAX WHEN BEVERAGE CONTAINERS ARE SO
DAMAGED IN TRANSIT FROM BOTTLER TO WHOLESALER
AS TO BE UNSALABLE

14 October, 1942.

You have referred to me the letter from Mr. Murray Allen which raises the question whether a railroad in the payment of claims for damages to shipments of bottled beer should properly include in the amount of the refund the value of the State tax levied by Section 517 of the Revenue Act and evidenced by taxpaid crowns or lids. The answer to this question depends upon whether the State may legally refund to the shipper the amount paid for the taxpaid crowns used in the shipment.

Section 517(e) of the Revenue Act contains the following provisions:

"The crowns and lids shall be sold by the Commissioner of Revenue at a discount of two per cent (2%) as sole compensation for North Carolina taxpaid crown and lid losses sustained in the process of production of malt beverages. No compensation or refund shall be made for tax-paid malt beverages given as free goods, or advertising, and losses, sustained by spoilage and breakage incident to the sale and distribution of malt beverages."

Mr. Allen contends that this provision does not apply to the losses in question and that upon the basis of the decision in *United States v. American Tobacco Company*, 166 U. S. 468, the State should refund the value of the taxpaid crowns.

I am unable to agree with this position in view of the provision that "no compensation or refund shall be made for . . . losses sustained by spoilage and breakage incident to the sale and distribution of malt beverages." In my opinion the General Assembly intended the two per cent (2%) discount to be the sole compensation for all losses of this kind. A loss which occurred in the transportation of the beverages by railroad or otherwise seems to me to be a loss "incident to the sale and distribution of malt beverages."

Further, I understand that this has been the uniform administrative construction and this construction is entitled to weight. *Cannon v. Maxwell*, 205 N. C. 420.

INCOME TAX; TAXABILITY OF DIVIDENDS FROM FIRST FEDERAL
SAVINGS AND LOAN ASSOCIATION

23 November, 1942.

You have referred to me your correspondence with the Dixie Fire Insurance Company relative to the income taxability of a dividend received by this company from the First Federal Savings and Loan Association of South Philadelphia, which I understand was organized under the authority of U. S. Code, Title 12, Section 1464 et seq., a portion of the Home Owners' Loan Act of 1933, as amended.

The taxpayer contends that the Public Debt Act of 1942 allows the taxation of dividends on governmental obligations only from and after March 28, 1942, and that since the shares upon which the

dividends in question were paid were issued prior to that date such dividends enjoy an immunity from state taxation.

The taxpayer's position ignores the provisions of U.S.C.A., Title 12, Section 1464(h). This statute is as follows:

"(h) Such associations, including their franchises, capital, reserves, and surplus, and their loans and income, shall be exempt from all taxation now or hereafter imposed by the United States (except the taxes imposed by sections 1410 and 1600 of Title 26 with respect to wages paid after December 31, 1939, for employment after such date) and all shares of such associations shall be exempt both as to their value and the income therefrom from all taxation (except surtaxes, estate, inheritance, and gift taxes) now or hereafter imposed by the United States; and no State, Territorial, county, municipal, or local taxing authority shall impose any tax on such associations or their franchise, capital, reserves, surplus, loans, or income greater than that imposed by such authority on other similar local mutual or co-operative thrift and home financing institutions. As amended Aug. 10, 1939, c. 666, Title IX, Sec. 909, 53 Stat. 1402."

It will be noted that this statute nowhere exempts the state taxation of dividends from First Federal Savings and Loan Association in the hands of shareholders. As pointed out in *Commissioner v. Flaherty*, 306 Massachusetts 461; 28 N. C. 2nd 433, Cert. Denied 312 U. S. 680, a tax upon a federal savings and loan association is different from a tax upon its customers, depositors, and shareholders and the immunity of the association as a governmental agency from taxation does not accrue to a taxpayer who has received income from the association.

It seems to me that the taxpayer has confused the power of the State to tax the First Federal Savings and Loan Associations themselves and the power of the State to tax the dividends received from such associations in the hands of shareholders. Since the federal government has by the very act under which the Federal Savings and Loan Association was organized not prohibited state taxation of the income from its shares received by shareholders the Public Debt Act of 1942 does not enter into the matter.

REVENUE ACT, SECTION 406(h); SALES TAX ON SALE OF USED CARS

25 November, 1942.

You request my opinion upon certain questions raised by Mr. Thomas P. Zum Brunnen. The questions, and my opinion thereon, are as follows:

1. An automobile dealer, designated as A, buys used cars for cash from a second dealer, designated as B. Dealer B acquired the cars as trade-ins in new car sales in respect to which sales tax was duly paid. When A sells the used cars, are the sales subject to the sales tax?

Section 406(h) of the Revenue Act is as follows:

"(h) Sales of used articles taken in trade, or a series of trades, as a credit or part payment on the sale of a new article, provided the tax levied in this article is paid on the full gross sales price of the new article. In the interpretation of this subsection,

new article shall be taken to mean the original stock in trade of the merchant, and shall not be limited to newly manufactured articles. The resale of articles repossessed by the vendor shall likewise be exempt from gross sales taxable under this article."

This statute clearly has the effect of exempting from the sales tax the sales from B to A, but I am of the opinion that it does not exempt the sales made by A. The statute purports to exempt only "*sales of articles taken in trade . . . as a credit or part payment on the sale of a new article. . . .*" The sales by A do not fall within this description, and there seems to be no other provision of the Revenue Act which would exempt these sales from Section 405(c), which levies the 3 per cent tax on the sales or purchase price of *any new or used* motor vehicle acquired for use on the streets or highways of this State.

2. Dealer A buys used cars for cash from residents of North Carolina who have paid the sales tax due on the car at the time of purchase. When A sells the car, is the sale subject to sales tax?

I am of the opinion that the tax is due on such sales. Section 406(h) does not exempt them from the operation of Section 405(c), and I find no other exemption in the Act.

In both of the situations considered there is no express exemption, and none can be implied. It is well established that exemptions from taxation are strictly construed. *McCanless Motor Co. v. Maxwell*, 210 N. C. 725; *Benson v. Johnston County*, 209 N. C. 751; *Stedman v. Winston-Salem*, 204 N. C. 203.

INHERITANCE TAXES; RATE OF TAXATION WHERE LAND IS DEVISED TO
CLASS B AND CLASS C BENEFICIARIES AS TENANTS BY THE
ENTIRETIES, AND PERSONAL PROPERTY IS BEQUEATHED
TO SAID BENEFICIARIES JOINTLY

30 November, 1942.

You state that Mary E. Loughlin left a will in which she devised to her brother and his wife certain real estate as tenants by the entirety, and also bequeathed certain personal property "to my brother, Charles S. Haithcock, and Ida Haithcock, his wife." You request my opinion upon the proper rates at which the inheritance taxes upon this devise and bequest should be computed, in view of the fact that the brother is a Class B beneficiary, and the wife a Class C beneficiary within the meaning of Secs. 4 and 5 of the Revenue Act of 1939, as amended.

Sections 4 and 5 of the Revenue Act levy inheritance taxes upon persons "entitled to any beneficial interest" in the property received, and the rates at which the taxes are computed vary according to the degree of relationship of the taxpayer with the decedent. A Class B beneficiary is taxed at the rate of 4 per cent on the first \$5,000 in value of the interest received, and a Class C beneficiary is taxed at the rate of 8 per cent upon the same value. The question presented by you is whether the fact that the land was devised by the entireties,

and the personal property was bequeathed jointly, justifies an application of the 4 per cent rate to the total value of the real and personal property involved.

1. *The real estate.* As stated, the statute taxes "any beneficial interest" received. While it is true that tenants by the entirety are regarded by legal fiction as one person, it is equally and more significantly true that each receives a separate and distinct "beneficial interest." For example, each receives a right of survivorship; husband's interest is slightly different from the wife's in that during their joint lives, he is entitled to the rents and profits to the exclusion of the wife; and each receives and enjoys the immunity of the land from execution for the debts of the other alone. See *Davis v. Bass*, 188 N. C. 200. These and other incidents of the estate result in the receipt by the husband and the wife, separately, of *beneficial interests* with respect to the land, some of them different. I am therefore of the opinion that the tax should be computed upon one-half of the value of the real estate at the 4 per cent rate and one-half at the 8 per cent rate. The wife is receiving beneficial interests in the property none the less because the estate is devised by the entireties.

2. *The personal property.* Here, it is even clearer than in the case of the real estate, that one-half of the value of the property should be subject to the 4, and the other half the 8, per cent rate. The estate by the entireties does not exist with respect to personal property, and there are no common law fictions of unity. The bequest of the personalty made the husband and wife joint tenants or tenants in common thereof. Each acquired among other things the right to partition the property and hold his or her share in severalty. See *C. S. 3253 et seq.* This right is clearly a "beneficial interest" making its recipient liable for the tax at the rate established for his or her relationship to the decedent.

Needless to say, the legal relationship of the wife to the decedent was not altered by marriage.

FRANCHISE TAXES; PAYMENT OF TAX BY PURCHASER OF ASSETS
UPON DISSOLUTION OF CORPORATION

14 December, 1942.

You have requested my opinion upon the authority to refund the amount of \$15.25, paid by Mr. Paul E. Darden, on the 1941 franchise tax liability of the Siler City Electric and Furniture Company, Inc.

You state that Mr. Darden was a stockholder and Secretary of this corporation. The majority of the stock was owned by Mr. Cashwell, who was President of the corporation. In October 1940, Mr. Cashwell sold his stockholdings in the corporation to Mr. Darden and thereupon Mr. Darden decided to discontinue the transaction of business in the corporate form although the corporation was not legally dissolved.

In April 1942, a Deputy Commissioner of Revenue called upon Mr. Darden and requested payment of the 1941 franchise tax for the

corporation in the amount of \$15.25. Mr. Darden paid this tax. On May 22, 1942, Mr. Darden filed with the Department an affidavit in which he stated that he had paid this money because he believed that the Revenue Department would close his business unless the tax was paid; that the tax was paid out of his personal funds and that he had not received or handled any funds of the corporation since October 1940, and did not have any funds of the corporation on hand. Mr. Darden requested in that letter that the sum of \$15.25 be refunded to him and you inquire whether the Department may lawfully make this refund.

Under Schedule C of the Revenue Act the franchise tax for the year 1941 was required to be paid on or before July 31, 1941. Therefore, the franchise tax for 1941 was due and payable at the time Mr. Darden bought the outstanding stock of the corporation. If Mr. Darden had refused to pay the franchise tax owed by the corporation when called upon to do so by a Deputy Commissioner of Revenue the Department of Revenue could have levied immediately upon all assets of the corporation by virtue of Section 913 of the Revenue Act. Mr. Darden in his affidavit stated that "I paid the said sum because I believed that your Deputy would close my business unless I paid him as he said he would do." This indicates knowledge on Mr. Darden's part that the corporation's franchise tax liability could be enforced against the corporate assets and that he preferred to pay the tax rather than subject the property of the corporation to sale under execution. Since he chose to pay the tax, it was not necessary for the Department of Revenue to levy upon the property and levy was withheld because the tax was paid. Mr. Darden was the sole owner of the business and he chose to pay the tax rather than have an execution levied upon the corporate assets and have his business interfered with to that extent.

The Department of Revenue was entitled to accept as a valid payment on behalf of the corporation the sum paid by Mr. Darden as an officer and controlling stockholder in the corporation. Mr. Darden objects to the payment on the ground that it was made from his personal funds. However, this fact would seem to be immaterial as Mr. Darden owned all the stock of the corporation and through such ownership all the assets of the corporation. In view of these facts the payment of the tax was ultimately to come from Mr. Darden's money or property.

If the State should refund the sum at this time and levy upon the corporate assets its position might be very much prejudiced by the difficulty in tracing the identity of the assets of the corporation. The State could have levied at the time the tax was demanded but withheld levy because Mr. Darden paid the tax due. Mr. Darden had the election at that time of either paying the tax or letting the property be levied upon. He chose to pay the tax and I am of the opinion that he is bound by this election. I, therefore, conclude that you have no authority to make the refund.

LIABILITY OF DISTRIBUTOR OF TEXTILE PRODUCTS

16 December, 1942.

You have requested my opinion upon the sales and use tax liability of H. W. Lehman, trading and doing business as Carolina Textile Products. Taxpayer is a distributor of textile products. His general business methods may be outlined as follows:

Customer sends an order to taxpayer. This order is sent by taxpayer to factors, who, pursuant to agreement, purchase the account upon stipulated terms and guarantee to taxpayer's vendor that the purchase price will be paid. The factors then send the order to selling agents, usually in New York City, who in turn, refer the order to a textile mill in North Carolina or in another state. The mill then ships the order to the customer, and sends the invoice and bill of lading to the factors, with copy to taxpayer. The factors bill the customer, sending taxpayer a copy of the invoice. The customer pays the factors, and each month the factors remit to taxpayer the amounts to which he is entitled under the agreement with them.

In the case of orders from the United States Government, a State, or a political subdivision thereof, the procedure is different in that such orders are not sent to the factors, but are sent directly to the mill agents. Otherwise the procedure is the same.

Under this course of business, taxpayer secures orders from many different classes of customers. Sales are solicited in person and by the circularization of a price list. The price list is from "Carolina Textile Products, Distributors of Cotton Textiles," and states that "both prices and deliveries are subject to change without notice and subject to mill acceptance." The shipments may be: (1) from North Carolina mills to North Carolina customers; (2) from mills in other states to customers in North Carolina; (3) from North Carolina mills to customers in other states; and (4) from mills in other states to customers in other states. Mill orders contain the following direction: "Omit mill marks and show our names as shippers only."

The question of whether taxpayer is engaged in an activity rendering him liable for sales or use taxes must be approached through the definitions in Schedules E and I of the Revenue Act of 1939, as amended. Section 404 defines wholesale merchants as those who sell to merchants for resale, and retail merchants as those who sell for any use or purpose on the part of the purchaser other than for resale. The peculiar nature of taxpayer's business at once suggests doubt as to whether he is engaged in "selling" as that term is defined in the Act. Sections 404(8) and 801(c) define "sale" and "selling" as follows:

"8. The word 'sale' or 'selling' shall mean any transfer of title or possession, or both, exchange, or barter of tangible personal property, condition or otherwise, however effected and by whatever name called, for a consideration paid or to be paid, in installments or otherwise, and shall include any of said transactions whereby title or ownership is ultimately to pass notwithstanding the retention of title or possession, or both, for security or other

purposes, and shall further mean and include any bailment, loan, lease, rental or license to use or consume tangible personal property for a consideration paid or to be paid, in installments or otherwise: Provided, the provisions of this subsection shall not apply to the lease or rental of motion picture films used for exhibition purposes and for which a tax of three per cent is paid on the total admissions for such exhibitions."

These definitions make the transfer of title or possession, or both, essential elements of a sale. Taxpayer never has title to, or possession of, the goods which he sells. Therefore the question becomes whether by effecting a transfer of title and possession *from third parties* to the customer he is "selling." It is true that taxpayer solicits the order and sets in motion the machinery which results in the eventual transfer of title and possession from the mills to the customer. However, the final control of such transfer rests with the mills, since they may reject the orders. In view of these facts, I am of the opinion that the taxpayer has not clearly been brought within the purview of the taxing statute, and it is well established that the doubt must be resolved in his favor. 59 C. J. p. 1131, and cases cited.

I therefore conclude that taxpayer is not liable for sales or use taxes to the State of North Carolina on account of the activity outlined above.

It should be pointed out, however, that the mills in North Carolina are liable for sales tax on account of sales to the customers in North Carolina. Further, if the North Carolina mills should not pay the sales tax, or if the out-of-state mills should not pay the use tax, the customers are clearly liable for use tax on purchases not exempted from tax by statute. See Revenue Act, Section 802. Exemptions from use tax are set forth in Section 803 of the Revenue Act. With reference to the merchandise sold by taxpayer, exemptions from use tax would apply to the following:

(1) Wholesale sales as defined in Section 404(4) and Section 404(5) of the Revenue Act.

(2) Sales to the federal government or any of its agencies. See Section 803(c) of the Revenue Act.

(3) Sales to the State of North Carolina or any of its agencies or subdivisions. Section 803(a) construed with Section 406(d). "Subdivisions" of the State include, of course, counties and cities.

In determining whether exemptions mentioned in paragraphs (2) and (3) above are applicable, careful inquiry must be made as to whether the purchaser is a *true agency* of the federal or state governments.

(4) Sales of articles to agencies of State and local governments for distribution in public welfare or relief work. Section 803(c) construed with Section 406(d). However, sales to hospitals or other charitable institutions are not exempt.

REVENUE ACT, SECTION 12; RECURRING TAX; ESTATE OF NANNIE C. VANN

31 December, 1942.

You request my opinion upon the following matter.

G. W. Lowe died 7 October, 1941, leaving certain personal property to Nannie C. Vann, to whom he was in no way related. Nannie C. Vann died on 13 May, 1942. The property bequeathed to her by Mr. Lowe, or its value, was not delivered or paid to Nannie C. Vann during her lifetime, but was presumably delivered or paid to her personal representative. The value of the property received by the estate of Nannie C. Vann from Mr. Lowe will, in the settlement of her estate, pass to the sister of Nannie C. Vann. Inheritance tax has been or will be paid the State with respect to the bequest to Nannie C. Vann, and counsel for the estate contends that the provisions of Section 12 of the Revenue Act exempt from inheritance taxation the value of this property when it passes to the sister of Nannie C. Vann. You inquire whether, in my opinion, this contention is sound.

Section 12 of the Revenue Act of 1939, as amended, is as follows:

"Sec. 12. *Recurring taxes.* Where property transferred has been taxed under the provisions of this article, such property shall not be assessed and/or taxed on account of any other transfer of like kind occurring within two years from the date of the death of the former decedent: *Provided*, that this section shall apply only to the transferees designated in Sections three and four of this article."

This office has previously ruled that the proper interpretation of this statute is that the exemption is applicable only when each transfer is to a Class A or Class B beneficiary of the decedent from whom the property is transferred. See opinion to you dated 4 March, 1940. This meaning is evident by the reference in the statute to a "transfer of like kind," and by the limitation in the proviso to Class A and Class B beneficiaries. Since Nannie C. Vann was not a Class A or B beneficiary of Mr. Lowe, the exemption provided for by Section 12 is not, in my opinion, available in this case. The fact that the property was not actually received by Nannie C. Vann during her lifetime does not alter this conclusion. The transfer to her estate is equivalent, for the purposes of this statute, to a transfer to her while living.

COOPERATIVES SPONSORED BY FARM SECURITY ADMINISTRATION;
EXEMPTION FROM INCOME TAX LIABILITY

9 March, 1943.

You have referred to me correspondence with Mr. Robert Wright Strange, Regional Attorney of the United States Department of Agriculture. Mr. Strange states that the Department of Revenue has ruled that the Scuppernong Mutual Association of Creswell, North Carolina, is exempt from paying income tax or filing income tax returns and inquires whether the Department will rule generally that all cooperative associations, both incorporated and unincorporated, which are organized under and supervised by the Farm Security Administration, will be exempt from paying income tax and filing in-

come tax returns. Mr. Strange submits a typical constitution and by-laws for one of the unincorporated associations and typical articles of incorporation and by-laws used in connection with the incorporated associations.

Section 314, Subsection (9), of the Revenue Act of 1939, as amended, is as follows:

"The following organizations shall be exempt from taxation under this article:

* * * * *

"9. Mutual associations formed under Consolidated Statutes five thousand two hundred and fifty-five et seq. (Chapter one hundred forty-four, Public Laws of one thousand nine hundred fifteen and amendments), formed to conduct agricultural business on the mutual plan; or to marketing associations organized under Sub-chapter five, Chapter ninety-three, Consolidated Statutes, Article XVI, Section five thousand two hundred fifty-nine (a) and following."

This provision clearly exempts from income taxation those associations organized under the laws referred to; and some of the associations sponsored by the Farm Security Administration are of this type. The unincorporated associations however are not organized under the authority of the laws referred to in the statute quoted above but are organized by agreement as purely voluntary associations. The constitution and by-laws of these associations provide for an association established for the purpose of the coöperative purchase of farm necessities and the marketing of farm products as well as the education of its members, the establishment of standards of quality and other group activities which would advance the farming interests of its members. It is provided that periodically the net earnings of such associations shall be calculated and after the establishment of a reserve fund and "such other funds as may be established from time to time," the remainder of the net earnings shall be distributed to the partners of the association whether members or nonmembers.

The Revenue Act provides for no exemption to such unincorporated associations and I am of the opinion that they are not exempt from the requirements of the income tax article without specific provision. Exemptions from taxation are strictly construed and, while it may be contended that these associations should be exempt, this contention is one for the consideration of the General Assembly.

INHERITANCE TAXATION; RESERVATION OF LIFE INCOME BY TRUSTOR FOR LIFE; WHETHER GIFT TAKING EFFECT AT TRUSTOR'S DEATH; ESTATE OF LULA M. COAN

12 March, 1943.

I have been requested to reconsider an opinion of this office dated 27 November, 1939, regarding the inheritance taxation of the estate of Lula M. Coan.

On 31 December, 1927, Lula M. Coan created an irrevocable trust and deposited therein 1,000 shares of the Class B Common stock of the R. J. Reynolds Tobacco Company. The provisions of the trust which are essential for present purposes were that the net income

from the stock was to be paid to her during her life, and that after her death the corpus was to be equally divided between her son and daughter. The transfer in trust was an irrevocable one. On 11 August, 1939, Lula M. Coan died, and the Commissioner of Revenue of North Carolina assessed inheritance taxes based on the inclusion in the gross estate of the value of the stock at the time of Mrs. Coan's death. This office by letter dated 27 November, 1939, expressed the opinion that such assessment was proper and lawful. Counsel for the estate (hereinafter called the "taxpayer") have filed briefs requesting a further consideration of the matter, and this opinion sets forth fully my views on the questions involved.

At the time of the creation of the trust, Section 1(3) of the Revenue Act of 1927 was in effect. That statute is in part as follows:

"A tax shall be and is hereby imposed upon the transfer of any property, real or personal, or of any interest therein or income therefrom, in trust or otherwise, to persons or corporations in the following cases:

* * * * *

"Third. When the transfer is of property made by a resident . . . by deed, grant, bargain, sale or gift . . . intended to take effect in possession or enjoyment at or after such death."

The taxpayer contends that this statute does not cover the transfer in question, and in support of this contention points to the fact that the General Assembly of 1933 amended this statute by adding the following thereto:

"including a transfer under which the transferor has retained for his life or for any period not ending before his death (a) the possession or enjoyment of, or the income from, the property. . . ." (Italics added.)

The taxpayer argues that this amendment was to close a gap in the statute and was prompted by the same reason that impelled the federal government to amend Section 302(c) of the Internal Revenue Act of 1926 by Joint Resolution adopted 3 March, 1931. The personal representative further contends that the 1933 amendment cannot apply to a transfer made prior to its enactment. Each of these contentions must be considered.

(1) *Is the value of the stock includible in the gross estate by virtue of the 1933 amendment to Section 1(3) of the Revenue Act?*

The personal representative relies upon certain federal authorities in his position that the 1933 amendment cannot be given a retrospective operation. However, for reasons that will presently appear, it is not necessary to inquire into the question whether such retroactive taxation would be valid.

(2) *Does Section 1(3) of the Revenue Act of 1927 authorize the inclusion in the gross estate of the value of the stock?*

Prior to the decision of the United States Supreme Court in *May v. Heiner*, 281 U. S. 238, 74 L. ed. 826, it was the generally accepted view that, under statutes taxing transfers in trust or otherwise

"intended to take effect in possession or enjoyment at or after death," a trust, "though irrevocably created, would be subject to inheritance or estate taxation if the settlor of the trust reserved to himself a life interest in the income from the trust property." C.C.H., Inheritance, Estate and Gift Tax Service, Par. 1560B. 1560C. See Rottschaefer, *Taxation of Transfers Intended to Take Effect in Possession or Enjoyment at Grantor's Death*, 14 Minn. Law Rev., 613, 628. "The fact that the income from the trust property did not pass until after death was held to be the determining factor, indicating that the settlor did not intend that the enjoyment of the trust property should pass to the ultimate beneficiaries until after his death." *Idem*. In *May v. Heiner* this general current or authority was interrupted. In that case, the trustor had irrevocably transferred securities in trust, with a provision that the income should be paid to her husband for life, and, should he predecease her, to her for life. It did not appear that the husband had predeceased his wife, but this was immaterial under the view of the Court, which held that the trust was not a transfer intended to take effect at death even though a life income had been reserved to the settlor if she survived her husband. This view was later followed in *Burnet, Commr. v. Northern Trust Co., Exr.*, 283 U. S. 782; *Morsman, Adm. v. Burnet, Commr.*, 283 U. S. 783; and *McCormick, et al., Exrs. v. Burnet, Com.*, 283 U. S. 784.

For general discussion of the problem, see (Note) 12 N.C.L.R. 180; 22 Minn. L. R. 1066.

These decisions led to the passage of the Joint Resolution of March 3, 1931, amending Section 302(c) of the 1926 Revenue Act, to provide specifically that there should be included in the gross estate the value of property transferred with a retention of income thereof for life.

Taxpayer asks the Commissioner to accept these decisions as sustaining the proposition that the Commissioner could not assess the tax in question under the provisions of Section 1(3) of the Revenue Act of 1927. If these decisions stood alone, taxpayer's contention might be correct. However, in the later decision of *Guaranty Trust Co., Exr. v. Blodgett*, 287 U. S. 509, the Supreme Court upheld the state court in taxing, under a statute essentially similar to the North Carolina act of 1927, an irrevocable trust by which certain securities were transferred with a provision that the trustor should receive the income for her life. This decision seems to indicate definitely that the United States Supreme Court will follow a state court in its view that such transfers are taxable as transfers intended to take effect at death. See also *Estate of A. C. Rising*, 186 Minn. 56, 242 N. W. 459. In view of these decisions, I do not regard *May v. Heiner* as now controlling in the interpretation of the state statute.

The taxpayer contends that this statute does not authorize the taxation in question since it (according to taxpayer's contention) refers only to a transfer of *property*. However this contention ignores the introductory sentence of Section 1, which is as follows:

"A tax shall be and is hereby imposed upon the transfer of any property real or personal, or *any interest therein or income therefrom*, . . . in the following cases."

In my opinion, the Third Subdivision must be read in the light of this clear and express declaration, and that when the statute is thus read, it is apparent that "property" was intended to mean not only the property itself, but any interest in or income therefrom. It is clear that in this case the right to receive the income passed from Mrs. Coan at her death, and it therefore appears that the language of the statute is satisfied.

The fact that the Revenue Act was amended in 1933 does not necessarily indicate that the statute until that time did not sanction the taxation in question. It could reasonably indicate only that the act was being clarified, as is often the practice, especially in revenue laws; or that the State was simply conforming its statute to the federal statute as it has done in many instances.

In view of the foregoing considerations, I am of the opinion that the transfer in question is taxable under the Revenue Act of 1927. This opinion is in harmony with opinions to the Commissioner of Revenue of this office dated 28 April, 1939 and 27 November, 1939.

COOPERATIVES SPONSORED BY FARM SECURITY ADMINISTRATION;
EXEMPTION FROM INCOME TAX LIABILITY

22 March, 1943.

It has been called to my attention that my opinion of 9 March, 1943, to you, relating to the subject set forth above, does not state that the associations exempted from income tax under Section 314, subsection (9), of the Revenue Act of 1939, as amended, are not required to file income tax returns with the Commissioner of Revenue. I take this occasion to supplement that opinion by stating that the incorporated associations exempted from income taxation under the statute referred to are not required by law to file with the Department of Revenue any income tax returns.

INHERITANCE TAXES; INCLUSION IN GROSS ESTATE OF REAL PROPERTY
SITUATE WITHIN OR WITHOUT THE STATE AND TANGIBLE
PERSONAL PROPERTY ADMINISTERED BY FOREIGN TRUST
ALL OF WHICH PROPERTY IS SUBJECT TO
POWER OF APPOINTMENT BY N. C.
RESIDENT; ESTATE OF
MARGARET HEREFORD

24 March, 1943.

You have referred to me, for my opinion, the question of the extent to which the State of North Carolina may levy its inheritance tax under the following circumstances.

Williamson W. Fuller, a resident of the State of New York, created by will six trusts—one for the benefit of his wife and one for the benefit of each of his five children—of whom Mrs. Margaret Hereford was one. Mr. Fuller provided that Mrs. Hereford should receive the income of the trust for life and that upon her death the trust for her benefit should terminate and the trust property be transferred to such person as Mrs. Hereford should appoint by her will, with certain limitations not pertinent here.

Mrs. Hereford died subsequent to the death of her Father and a resident of the State of North Carolina. In the exercise of the power of appointment granted her by her Father's will, she bequeathed and devised real estate situate in the State of New York of a value of \$147,118.28, real estate situate in the State of North Carolina of the value of \$1,045.08, and intangible personal property of the value of \$8,124.13. You inquire to what extent the inheritance tax levied by the Revenue Act of 1939, as amended, may be imposed upon the value of the property thus passing under the exercise of the power of appointment by Mrs. Hereford.

Section 1 (Fifth) of the Revenue Act of 1939, is as follows:

"*Fifth.* Whenever any person or corporation shall exercise a power of appointment derived from any disposition of property made either before or after the passage of this Act, such appointment when made shall be deemed a transfer taxable under the provisions of this Act, in the same manner as though the property to which such appointment relates belonged absolutely to the donee of such power, and had been bequeathed or devised by such donee by will, and the rate shall be determined by the relationship between the beneficiary under the power and the donor; and whenever any person or corporation having such power of appointment so derived shall, for any reason whatever, omit or fail to exercise the same, in whole or in part or where for any reason the said power has not been exercised, a transfer taxable under the provisions of this Act shall be deemed to take place, to the extent of such omission or failure, in the same manner as though the persons or corporations thereby becoming entitled to the possession or enjoyment of the property to which such power related had succeeded thereto by will of the donee of the power failing to exercise the same, taking effect at the time of such omission or failure."

(1) *Real property situate in the State of New York.* It is well established that the situs of real property for inheritance tax purposes is considered to be the jurisdiction within which the land lies. Paragraph 1605, Commerce Clearing House Inheritance, Estate and Gift Tax Service—All State Treatise. Accordingly, if Mrs. Hereford had directly owned real estate situate in New York State, the State of North Carolina could not have imposed inheritance tax upon the value of that property at her death. The question then arises whether the fact that the real estate passed under a power of appointment changes this result. Section 1 (Fifth) of the Revenue Act of 1939, quoted above, specifically provides that when a person shall exercise a power of appointment, the appointment when made shall be deemed a taxable transfer "in the same manner as though the property to which such appointment relates belonged absolutely to the donee of such power, and had been bequeathed or devised by such donee by will. . . ." In view of this provision for inheritance tax purposes the New York real estate occupies the same legal status as though Mrs. Hereford had owned it directly and devised it by her will. Therefore, I conclude that the value of such real estate situate in New York State should be excluded from the gross estate.

(2) *Real estate situate in North Carolina.* By an application of the same principles referred to in (1) above, it is my opinion that the

value of the real estate situate in North Carolina is clearly includible in the gross estate.

(3) *Intangible personal property.* This intangible personal property was held in New York in trust under the will of a resident of New York. It is contended by counsel for Mrs. Hereford's estate that this property was not subject to North Carolina inheritance tax on the ground that "when it passed by the exercise of a power of appointment by the donee of that power it is deemed in law to have passed under the will of the donor of the power, a resident of New York." I am unable to agree with this position in view of the decisions of the Supreme Court of the United States in *Graves, et al. v. Schmidlapp, et al.*, 315 U. S. 657, 86 Law Ed. 1097. See also *Curry v. McCannless*, 307 U. S. 357; *Graves v. Elliott*, 307 U. S. 383 and *Bullen v. Wisconsin*, 240 U. S. 625.

REVENUE ACT, SECTION 161; INCLUSION IN TAX BASE OF ICE CREAM
DUMPED, DONATED OR SOLD OUT OF STATE AND OF FROZEN
CONFECTIONS; SOUTHERN DAIRIES, INC.

25 March, 1943.

You have requested my opinion upon several questions raised by Southern Dairies, Inc., regarding its liability under Section 161 of the Revenue Act of 1939, as amended.

Taxpayer is a corporation engaged in the business of manufacturing and selling at wholesale ice cream and frozen confections. Taxpayer owns factories located in North Carolina and the products of these factories are transferred to branches located in North Carolina where they are stored temporarily and sold at wholesale. In addition, products of the North Carolina factories are exported to branches of the corporation located in South Carolina and Virginia, where they are stored temporarily, pending wholesale sale to dealers in that State. The orders covering the sale of the ice cream so exported are taken, approved and filled in South Carolina or Virginia.

Section 161 of the Revenue Act levies a base license tax upon "every person, firm, or corporation engaged in the business of manufacturing or distributing ice cream at wholesale . . . for each factory or place where manufactured and/or stored for distribution," graduated according to the population of the city or town in which said business is located. The statute then levies "an additional tax of one-half a cent for each gallon manufactured, sold, and/or distributed."

The taxpayer raises the following questions regarding its liability for the additional one-half cent per gallon tax on account of the operations referred to above:

(1) Is the taxpayer entitled to exclude from the tax base of gross gallonage ice cream manufactured in North Carolina and exported to taxpayer's branches in another state, where it is sold at wholesale to dealers by a sale entirely consummated in the foreign state?

(2) Is the taxpayer entitled to exclude from the tax base of gross gallonage ice cream reworked, dumped or donated?

(3) Are certain frozen confections manufactured by taxpayer under patent rights granted by the Federal Government included

within the description of "ice cream, frozen custards, sherbets, water ices, and/or or similar frozen products" as this phrase is used in Section 161?

The answer to each of these questions must be sought.

(1) *Ice cream manufactured in the state and exported from state to taxpayer's branches in another state, where it is sold at wholesale to dealer by a sale entirely consummated in the foreign state.* The taxpayer contends that the additional tax levied by Section 161 is an excise tax on sales measured by total gallons sold; that ice cream exported to branches in other states and sold from such branches to dealers is not subject to tax because, first, the statute is not intended to tax such sales, and second, that if the statute is intended to tax such sales such taxation would be invalid as contravening the commerce clause of the Federal Constitution.

The intent of Section 161 could have been more happily expressed. The base tax is levied upon those "engaged in the business of manufacturing or distributing ice cream at wholesale." The additional tax of one-half cent per gallon is due with respect to "each gallon manufactured, sold, and/or distributed." The statute then provides for monthly reports to the Commissioner covering "all such gross sales" for the previous month.

The taxpayer contends that since the statute provides for reports concerning all gross sales, the intent is to lay an excise tax on sales measured by total gallons sold and not upon manufacture or distribution where there has been no sale.

I am unable to agree with this contention. In construing a taxing statute the language which actually levies the tax is of first importance. There is nothing equivocal, ambiguous or obscure about the wording "and an additional tax of one-half cent for each gallon manufactured, sold, and/or distributed." The portion of the statute requiring reports of all gross sales is separated from the portion just quoted which actually levies the tax, and is concerned merely with the administrative procedure of reports to the Commissioner. I know of no rule of construction that would allow a provision of this nature to control over clear and express wording levying the tax.

In passing it should be noted that the "monthly gallonage tax report" which the Commissioner of Revenue requires to be filled out by persons taxed under Section 161 provides for a report of "gross gallonage . . . manufactured or distributed in North Carolina" for the month for which the report is made. Taxpayer contends that this administrative form cannot control in the interpretation of the statute, especially since the statute requires a report of "sales." While the form is not controlling, it is clear evidence of the administrative construction which is entitled to weight in ascertaining the intent of the statute. See Revenue Act, Section 933; *Powell v. Maxwell*, 210 N. C. 211; *Cannon v. Maxwell*, 205 N. C. 420. I therefore conclude that the provision of the statute requiring a report covering gross sales should not control over the clear and unambiguous declaration that the statute taxes those "engaged in the business of manufacturing or distributing ice cream at wholesale"

and that such persons are subject to "an additional tax of one-half cent for each gallon manufactured, sold, and/or distributed." In my opinion the contrary view would ignore essential provisions of the statute and give undue weight to a provision relating merely to administrative procedure. For the reasons indicated it is my view that where taxpayer manufactures ice cream in North Carolina the statute levies a tax for the privilege of manufacturing and that such tax is measured by gallons manufactured.

This interpretation requires the conclusion that there should be included in the tax base all gallonage manufactured in North Carolina, regardless of whether a portion of such gallonage is actually sold outside of the State. Taxpayer has conceded that if the tax is a tax on manufacturing it may validly be measured by products manufactured in the State, even if those products are sold outside the State in interstate commerce. *American Manufacturing Company v. City of St. Louis*, 250 U. S. 459; 63 L. ed. 1084, cited in taxpayer's brief. Taxes levied by Schedule B of the Revenue Act, in which Section 161 is found, are levied for the privilege of engaging in business. See Section 100.

(2) *Ice cream reworked, dumped, or donated.* My interpretation of the statute, as indicated under paragraph (1) above, requires the conclusion that ice cream manufactured by taxpayer, but later reworked, dumped or donated, must nevertheless be included within the tax base. It clearly follows that if the tax is laid upon manufacture, it is immaterial what disposition is later made of the manufactured products.

(3) *Frozen confections as within the description of "ice cream, frozen custards, sherbets, water ices, and/or similar frozen products."* Section 161(b) is as follows:

"(b) For the purpose of this section the words 'ice cream' shall apply to ice cream, frozen custards, sherbets, water ices, and/or similar frozen products."

Taxpayer manufactures certain frozen confections under license from the holder or his assigns of patents granted by the United States government. These confections are known as "Popsicles," "Fugicles," "Creamsicles and Chokows," "Sally Sandwiches," and "Sally and Dixie Cups."

Popsicles are manufactured from a specially prepared syrup which is poured into molds. The molds are immersed in brine solution having a low temperature. Taxpayer points out that this process is somewhat different from that used in the manufacture of water ice.

Fugicles are made from a specially prepared powder to which is added by formula, cream, skim condensed milk, gelatin, sweetening and water. Otherwise, the processing is the same as that for popsicles.

Creamsicles and *Chokows* are made in part with ice cream. They consist of a core of ice cream incased in other edible substance.

Sally Sandwiches consist of ice cream between two edible wafers or cakes.

Sally and *Dixie Cups* consist of individual cups containing ice cream or sherbet, or both.

Taxpayer proposes that a fair interpretation of whether these frozen confections fall within the meaning of Section 161(b) is as follows: ". . . If more than a majority of the essential factors such as license to make, ingredients used, equipment used in processing, method of processing, appearance of finished product, manner in which advertised, merchandised and sold, taste and ultimate use, are the same as like characteristics of the prime article, i.e., ice cream, frozen custards, sherbets or water ices," then the confection would be taxable under the statute. Measured by this test taxpayer concludes that Popsicles and Fugicles would not be subject to the tax, while the remaining confections would be taxable.

I am unable to agree with taxpayer's views upon this matter. It seems to me that Section 161(b) is extremely broad and evidences the legislative intent that there shall be included in the gallonage subject to tax the confections under consideration. "Popsicles" and "fugicles," in my opinion, fall within the meaning of the words "sherbets, water ices, and/or similar frozen products." This general wording was no doubt used in the statute in order to bring within the sphere of taxation all such frozen products and the language is not such that it can be reasonably given a restricted meaning based upon refinements of processing which do not result in a basic difference.

The taxpayer has filed a very thorough and exhaustive brief which ably and clearly states his contentions in this matter. I regret that I cannot agree with his views. I must advise the Commissioner that the additional assessment including interest and penalties of \$12,990.94 should be made, based upon the views outlined in this letter.

REVENUE ACT, SECTION 127; TAX ON CHAIRS IN PRIVATE DINING ROOMS

6 April, 1943.

You have referred to me a letter from Mr. Earl Fincher, Manager of the S&W Cafeteria in Raleigh, with regard to the tax levied in Section 127 of the Revenue Act of 1939, as amended, on chairs in private dining rooms.

Mr. Fincher states that in addition to the chairs in the main dining room and those in the Tray Shop, which are open to the public at all times, the Cafeteria maintains certain private dining rooms used only occasionally for entertaining civic groups, business organizations, school fraternities, war agencies, and similar groups. Mr. Fincher contends that the chairs in these private dining rooms should not be considered in determining the base for the privilege tax levied in Section 127 of the Revenue Act.

The provisions of Section 127 are in part as follows:

"Every person, firm, or corporation engaged in the business of operating a restaurant, cafe, cafeteria, hotel, with dining service on the European plan, drug store, or other place where prepared food is sold, shall apply for and procure from the Commissioner of Revenue a State license for the privilege of transacting such

business. The tax for such license shall be based on the number of persons provided with chairs, stools, or benches, and shall be one dollar (\$1.00) per person, with a minimum tax of five dollars (\$5.00): Provided, that the tax levied in this paragraph shall not apply to industrial plants maintaining a non-profit restaurant, cafe or cafeteria solely for the convenience of its employees."

Since the statute does not expressly exclude from its operation chairs in private dining rooms used only on certain occasions, I am of the opinion that these chairs must be included in determining the tax liability of the S&W Cafeteria under Section 127. It is a well known rule of statutory construction that an exemption from taxation must clearly appear before a taxpayer may successfully claim it. The taxpayer's contention that the tax is not equitable relates to the policy of the statute, which is a legislative matter. Relief must, in my opinion, come by way of the General Assembly.

MOTOR FUEL TAXES; INSPECTION FEE ON GASOLINE PURCHASED BY
GOVERNMENT AT OUT OF STATE POINT AND SHIPPED TO
MILITARY RESERVATION IN STATE

22 April, 1943.

You have requested my opinion upon the question whether the gasoline inspection fee levied by Public Laws 1937, c. 425, s. 5 (Section 4870(s) of Michie's 1939 N. C. Code), may legally be assessed with respect to motor fuels sold to the Federal Government under the circumstances hereinafter set forth.

The Army of the United States, from the Army Air Forces Materiel Center at Dayton, Ohio, invited bids for motor fuel needed by the Army. In response to this invitation a company engaged in the production and distribution of petroleum products (hereinafter called the contractor), placed a bid offering to sell the motor fuel at a stated price F.O.B. Port Arthur, Texas. The motor fuel was subject to primary inspection and acceptance for payment at Port Arthur, Texas, and was shipped from Port Arthur to Fort Bragg, North Carolina, on a commercial bill of lading which was converted to a government bill of lading at Fort Bragg. The government reserved the right to test the motor fuel subsequent to acceptance and payment.

The North Carolina motor fuel inspection fee is levied to defray the expenses of motor fuel used, sold, or offered for sale. See Public Laws 1937, c. 425, ss. 4, 5 (Sections 4870(r) and 4870(s) Michie's 1939 N. C. Code). The use, sale, or offering for sale, must obviously occur within the State of North Carolina in order for the State to have jurisdiction to levy the inspection fee.

It is my opinion that the motor fuel in question was not within the jurisdiction of the State for the purposes of the assessment of the inspection fee. The contract of sale between the contractor and the government specified the shipping point as Port Arthur, Texas. The government had the right to inspect and accept the fuel at that point. After such inspection and acceptance the fuel was under the direction and control of the government and could have been diverted to a destination other than Fort Bragg or could have been stopped in transit. In view of these facts the contract of sale seems to have

been consummated beyond the territorial limits of the State of North Carolina. I do not think that the fact that the motor fuel was shipped by a commercial bill of lading to Fort Bragg alters this legal conclusion since the commercial bill of lading was converted to a government bill of lading at Fort Bragg.

However, even if title did not pass to the government until the motor fuel reached Fort Bragg, the State of North Carolina would have been without jurisdiction to assess the inspection fee. The motor fuel was shipped by an interstate shipment to the Federal Government on property under exclusive jurisdiction of the Federal Government. I am, therefore, of the opinion that the fuel was never used, sold, or offered for sale, within the State of North Carolina within the meaning of the statute imposing the motor fuel inspection fee.

This opinion is confined to the peculiar facts stated above and is not to be construed as a ruling that the inspection fee is not assessable under other circumstances involving purchases by the Federal Government.

GASOLINE TAX; EXEMPTION CERTIFICATE FOR SALES TO GOVERNMENT

3 May, 1943.

You have requested my opinion upon the following matter.

You state that in spite of the fact that the Commissioner of Revenue has required that the exemption of gasoline tax on gasoline sold to the Federal Government, or for exclusive use of the Federal Government, should be supported by U. S. Government tax exemption certificates, standard form 1094, covering the particular shipments as to which the tax exemption is claimed, various distributors and purchasers of gasoline have requested the Commissioner to allow the exemption without such exemption certificates either by recognizing that the sales in question were in fact for government use or by sanctioning the use of a blanket government exemption certificate under which the purchaser certifies on each invoice that he is the holder of such a certificate and is entitled to tax exemption.

You inquire concerning the legality of the requirement of tax exemption certificates covering particular purchases, and whether one or more alternative methods of evidencing the tax exemption should be allowed.

Public Laws 1931, c. 145, s. 24 (Sec. 2613(i9) of Michie's 1939 North Carolina Code) is as follows:

"Sec. 2613(i9). *Rebates for fuels sold to U. S. Government or for use in aircraft.*—The Commissioner of Revenue is authorized under such rules and regulations as he may adopt for that purpose, to relieve any distributor from the payment of the tax herein levied for any motor fuels sold to the United States Government, and/or gasoline of such quality that it is not adapted for use in ordinary automotive vehicles, but is designed for and sold and used exclusively in aircraft motors, when it appears to the satisfaction of the Commissioner of Revenue that the tax herein imposed has not been added to the sale price of such motor fuel, and the Commissioner of Revenue is likewise authorized to refund by warrant drawn upon the State Treasurer to the person paying the same, any tax paid under the provisions of this article

which constitutes an unlawful burden upon interstate commerce, in conflict with the provisions of the Constitution of the United States: *Provided*, that any claims for such rebate which are not filed with the Commissioner of Revenue in accordance with forms to be provided by the Commissioner of Revenue within sixty days after the payment of said tax shall be deemed to have been waived. (1931, c. 145, s. 24.)”

I understand that pursuant to this statute the Commissioner of Revenue adopted a rule or regulation that tax exemption on sales of gasoline to the United States government or for its use would be recognized only on the presentation of a federal tax exemption certificate, form 1094, covering the specific purchases with respect to which exemption is claimed. I also understand that this regulation has been in effect for several years and has been consistently followed.

I am of the opinion that the Commissioner of Revenue has, by virtue of the statute quoted above, ample authority to promulgate such a regulation. The question of whether the regulation should be continued in its present form or changed to permit other evidences of tax exemption is an administrative question to be determined by the Commissioner. If he deems it wise not to change the regulation and continue to enforce it in its present form there is in my opinion clear legal authority for his position.

LIABILITY OF CHARLOTTE BRANCH OF FEDERAL RESERVE BANK FOR
SALES TAX ON RENTAL OF CARD SORTER

3 May, 1943.

You have referred to me a letter from Mr. M. G. Wallace, Counsel for the Federal Reserve Bank of Richmond, with regard to the sales tax liability of the Charlotte Branch of that Bank on account of the rental, for a stipulated monthly charge, from the International Business Machines Corporation, of a card sorter and counter machine for use in connection with the handling of original registration stubs of Series “E” War Savings Bonds.

Taxpayer contends that the rental of the card sorter to the Charlotte Branch is exempt from the sales tax by reason of paragraph 3 of Section 7 of the Federal Reserve Act (U. S. Code Title 12, Section 531), which reads as follows:

“Federal reserve banks, including the capital stock and surplus therein, and the income derived therefrom shall be exempt from Federal, State, and local taxation, except taxes upon real estate.”

In support of its contention, taxpayer cites the recent case of *Federal Land Bank v. Bismark Lumber Co.*, 625 Ct. p. 1. Here the Court held that a sales tax levied by the State of North Dakota upon the sale of tangible personal property could not be levied on a sale to a Federal Land Bank, because of the provisions of Section 26 of the Federal Farm Loan Act (U. S. Code Title 12, Section 931), which provides that Federal Land Banks shall be exempt from State and local taxation. This section of the Federal Farm Loan Act is practically identical with the section of the Federal Reserve Act exempting such banks from taxes quoted above.

Taxpayer's claim for exemption requires an analysis of the nature of the North Carolina sales tax imposed by Schedule E of the Revenue Act of 1939, as amended.

Section 401 of the Revenue Act provides in part as follows:

"The tax upon the sale of tangible personal property in this State is levied as a license or privilege tax for engaging or continuing in the business of a 'wholesale' or 'retail' merchant as defined in this Article. Retail merchants may add to the price of merchandise the amount of the tax on the sale thereof, and when so added shall constitute a part of such price, shall be a debt from purchaser to merchant until paid, and shall be recoverable at law in the same manner as other debts. It is the purpose and intent of this article that the tax levied herein on retail sales shall be added to the sales price of merchandise and thereby be passed on the consumer instead of being absorbed by the merchant."

Section 404(8) defines sales to include rentals.

It is thus clear that the North Carolina sales tax is in theory of law of the "occupational" rather than of the "consumer" type of sales tax. The legal incidence of the tax is on the merchant although the statute expresses the intent that the tax shall be added to the sales price of merchandise and passed on to the consumer. The North Dakota sales tax law which was before the court in the Federal Land Bank case, *supra*, imposed the tax upon the gross receipts from all sales of tangible personal property sold at retail in the state of North Dakota to consumers or users and provides that retailers shall add the tax or the average equivalent thereof to the sales price and when added such taxes shall constitute a part of the price or charge. The most noticeable differences between the North Dakota statute and the North Carolina statute are:

(1) The North Carolina statute expressly levies the sales tax as a license or privilege tax for engaging in the mercantile business whereas the North Dakota act has no such declaration.

(2) The North Dakota act provides that the tax *shall* be added to the sales price, whereas the North Carolina act provides that the tax *may* be added. It would thus appear that the North Dakota statute places the tax more directly upon the consumer than does the North Carolina statute and the question arises whether this distinction is material in this case.

I am of the opinion that the distinction is not material here. Section 401 specifically provides that it is the legislative intent that the tax be added to the sales price and passed to the consumer. Although the merchant is not required by the North Carolina Act to pass the tax to the consumer, when he does do so, as in the great majority of cases, the burden of the tax is borne by the consumer. Therefore, while there is apparently a distinction in the legal incidence of the North Dakota and North Carolina sales taxes, it is my opinion that the distinction is purely theoretical and that the doctrine of the Federal Land Bank case, *supra*, should obtain with reference to the rentals under consideration.

I, therefore, conclude that the Charlotte Branch of the Federal Reserve Bank is exempt from the payment of sales tax to North Carolina on the monthly rental of the card sorter.

LIABILITY OF CONTRACTOR ERECTING HOUSES FOR FEDERAL PUBLIC
HOUSING AUTHORITY FOR LICENSE UNDER SECTION 122

6 May, 1943.

You have requested my opinion as to the liability of Hardin and Ramsey of Atlanta, Georgia, for contractor's license under Section 122 of the Revenue Act.

Hardin and Ramsey have constructed 400 prefabricated demountable dwellings at Wilmington, N. C., for the Federal Public Housing Authority. These houses were unloaded at the ship yard siding and transported by trucks on the Carolina Beach Road, which is a military road, to the building site. Apparently, all of the incidental building work took place on the property owned by the Federal Public Housing Authority. In compliance with government specifications, Hardin and Ramsey carried workmen's compensation on the employees engaged on the job under the North Carolina Workmen's Compensation Law.

The question raised is whether Hardin and Ramsey, since they are erecting these houses for a federal agency on government owned property, are liable for the payment of the contractor's license tax levied under Section 122 of the Revenue Act.

Recent decisions of the United States Supreme Court have clearly established the fact that a contractor with the federal government, in the absence of an agency relationship, is not a federal instrumentality and is therefore not exempt from state taxes. He is liable for non-discriminatory state taxes to the same extent as others similarly engaged. See *Atkinson v. State Tax Commission of Oregon*, 303 U. S. 20, 82 L. Ed. 21; *James v. Dravo Cont. Co.*, 302 U. S. 134, 148, 82 L. Ed. 155, 166; *Alabama v. King and Boozer*, 314 U. S. 1.

The question here, then, must be determined by whether or not the work under the contract was performed outside the territorial jurisdiction of North Carolina so as to preclude the State from levying the contractor's license tax under Section 122. If exclusive jurisdiction over lands has been ceded by a State to the United States, the State law, as such, has no application in the territory involved. See *Pacific Coast Dairy v. Department of Agriculture of State of California* (U. S. Supreme Ct. March 1, 1943). However, the Supreme Court in *Atkinson v. State Tax Commission of Oregon*, *supra*, upheld the levy of state taxes upon a contractor engaged in work under a contract with the federal government on lands purchased by the United States on the ground that the federal government clearly showed that it did not exercise exclusive jurisdiction over the territory ceded when it required the contractors to come under the provisions of the state Workmen's Compensation law after it had been decided that state workmen's compensation laws are not effective in territory over which the United States has exclusive jurisdiction. See also *Silas Mason Co. v. Tax Commission*, 302 U. S. 186, 82 L. Ed. 187.

Hardin and Ramsey have advised you that they were required by the Federal Government to carry Workmen's Compensation on their employees under the laws of this State. It is my opinion that this

fact alone renders Hardin and Ramsey liable for the contractor's license tax levied under Section 122 of the Revenue Act under the rationale of the Atkinson decision.

There may be other facts which would bring Hardin and Ramsey under the taxing jurisdiction of the State, such as the use by them in carrying on this work of streets, sidewalks and other areas not within the territory owned by the Federal Public Housing Authority. But it seems needless to inquire into these further, since under the authority of the Atkinson case, *supra*, the State has obtained taxing jurisdiction by virtue of the fact that the contractors availed themselves of the North Carolina Workmen's Compensation laws.

INHERITANCE TAXES; WITHDRAWAL OF BUILDING AND LOAN STOCK BY
SURVIVOR

24 May, 1943.

You have referred to me a letter from Mr. R. D. Douglas which raises certain questions regarding the 1943 amendment to Section 21½ of the Revenue Act relating to the withdrawal of building and loan stock by a surviving spouse when such stock had been issued in the names of husband and wife and payable to either or the survivor of them. The amendment authorizes the withdrawal of as much as 80 per cent of the stock by the surviving spouse and provides that the remaining 20 per cent must be retained by the building and loan association to cover any inheritance taxes that may be assessed.

Mr. Douglas, relying on certain decisions of the Supreme Court, had, prior to the 1943 amendment, drawn up for his client, the Hone Federal Savings & Loan Association of Greensboro, a form to be signed by a husband and wife desiring to make a joint account payable on death to the survivor of them or payable during life to either of them. He inquires whether the 1943 amendment referred to changes the law of the decisions in *Taylor v. Smith*, 116 N. C. 531 and *Jones v. Waldroup*, 217 N. C. 178, or whether the amendment simply recognizes the right of the survivor to the entire balance but requires the retention of 20 per cent by the building and loan association to secure the payment of taxes.

The decisions of the Supreme Court referred to above clearly establish the proposition that a husband and wife may validly agree that personal property shall be owned jointly by them and that upon the death of either the survivor shall be entitled to the entire property. A husband and wife may make such an agreement with reference to building and loan stock. However, the establishment of a joint account in building and loan stock with the right of survivorship is always subject to the principle that so much of the account as represents funds contributed by the decedent must be reported upon his death for inheritance tax purposes. Section 1 of the Revenue Act operates to tax the transfer of such property to the survivor upon the death of the decedent and the amendment under consideration is intended to secure the payment of any such tax that may be due. Prior to the 1943 amendment the building and loan

association could not release any part of the joint account without securing the permission of the Commissioner of Revenue. The amendment was therefore intended to provide for an immediate release of 80 per cent of the building and loan stock and dispense with the requirement that permission be obtained to this extent. The retention of 20 per cent was provided for because of the fact that the highest rate of taxation under the inheritance tax schedule is 17 per cent and it was thought that the retention of 20 per cent as a required figure would be reasonable and safe. I therefore conclude that the effect of the 1943 amendment does not in any way affect the creation of such joint accounts with right of survivorship but is intended merely to expedite the payment of a large portion of such accounts to the survivor upon the death of either spouse.

Mr Douglas inquires what "taxes" are referred to in the Act. Inheritance taxes were referred to. The Act applies in terms only to husband and wife and therefore would not apply to any other persons holding such joint accounts.

Mr. Douglas further inquires whether a building and loan association in complying with the 1943 amendment may pay 80 per cent of the stock to a surviving spouse immediately mailing proper notice to the Commissioner of Revenue or whether it is necessary to withhold the entire amount until a waiver has been received from the Commissioner. The answer to this question has already been indicated. Since the amendment was intended to permit an immediate release of 80 per cent of the account it is only necessary that the notice be sent before the 80 per cent be released.

FRANCHISE TAXES; INCLUSION IN TAX BASE OF STOCKS AND OBLIGATIONS
HELD BY TAXPAYER IN CONNECTION WITH FOREIGN
SUBSIDIARIES AND OTHER CORPORATIONS.
F. W. WOOLWORTH CO.

21 May, 1943.

You request my opinion upon the question of the power of the Commissioner of Revenue to include in the base of the franchise tax assessed against F. W. Woolworth Co. (hereinafter referred to as the "taxpayer"), stocks and obligations held by taxpayer in connection with two foreign subsidiary corporations and with various other corporations.

Taxpayer is a foreign corporation qualified to do business in North Carolina. The nature of the business transacted in North Carolina is the purchase and sale of merchandise. Taxpayer owns the controlling stock in two foreign subsidiary corporations, and a subsidiary corporation in Canada, and also holds the stocks and obligations of various other corporations. None of these corporations has ever transacted any business in North Carolina.

For the year ending June 30, 1942, the Commissioner of Revenue proposes to assess against taxpayer additional franchise tax in the amount of \$2,242.64, based on the inclusion in the tax base (capital stock, surplus and undivided profits) of the stocks and obligations

of the foreign subsidiary corporations and other corporations. The taxpayer contends that such stocks and obligations are held in connection with taxpayer's holding company business which is entirely separate and distinct from its merchandising business carried on in North Carolina. The question presented for my opinion is whether this contention is sound.

It is my understanding that taxpayer will not contest the inclusion in the tax base of the stock and obligations held in connection with the Canadian subsidiary if the intangibles held in connection with the other corporations referred to above are excluded; therefore, this letter will not consider the status of the intangibles held in the Canadian subsidiary.

It has been held that in imposing an excise tax on foreign corporations with respect to doing business within the State, a State may take into consideration the property of such corporation beyond its borders to "get the true value of the things within it, when they are part of an organic system of wide extent" and when the out-of-state property "can be seen in some plain and fairly intelligible way" to add to the value of the property and rights exercised in the State. *Wallace v. Hines*, 253 U. S. 56. See also *Bass, Ratcliff and Gretton, Ltd. v. State Tax Commission*, 266 U. S. 271. However, it must appear that there is some organic and reasonable relationship between the out-of-state property and the business done within this State.

The North Carolina franchise tax is levied "for the privilege of engaging in or carrying on the business or doing the act named; and, if taxpayer be a corporation, . . . for the continuance of its corporate rights and privileges granted under its charter, if incorporated in this State, or by reason of any act of domestication if incorporated in another state." See Section 201 of the Revenue Act of 1939.

The question therefore resolves itself into an inquiry whether there is a sufficient relation between the holding of the stocks and obligations of the subsidiaries and other corporations and the merchandising business transacted by taxpayer in this State to afford a valid basis for the inclusion of said stocks and obligations in the tax base.

It is true that the stocks and obligations held in other corporations strengthen taxpayer's corporate structure and may possibly aid in the expansion and promotion of taxpayer's business in this State. It is also true that merchandising methods and expenses developed and acquired in the business of the foreign subsidiaries are at taxpayer's disposal and may be used to advantage in North Carolina. However, these threads of business relationship are in my opinion too tenuous to justify the inclusion in the North Carolina franchise tax base of the stocks and obligations under consideration. It does not appear that there are any other connections between the business of the foreign subsidiaries and the North Carolina business of the corporation. There is no common purchasing of merchandise or other common functions in operation which would integrate the businesses.

It is my view that the rationale of the decision in *Commonwealth of Pa. v. Columbia Gas & Electric Co.*, 336 Pa. 209, Alt. (2d) 404,

is applicable to this case and requires the exclusion of the values of the intangibles under consideration. The case of *Ford Motor Co. v. Beauchamp*, 308 U. S. 331, is distinguishable from the situation under consideration, since in that case there was a clear interrelationship between the use of property outside the taxing state and the property within the taxing state.

INCOME TAX; L. M. SNEED; DEDUCTIBILITY OF LOSS INCURRED ON
PROPERTY LOCATED OUT OF STATE

27 May, 1943.

You have requested my opinion with regard to the 1942 income tax of Mr. L. M. Sneed of Raleigh, North Carolina.

It appears that the above named person, who has been a resident of this State since 1930, owned property in the State of Virginia. He has been reporting and paying tax on the income from this property to the State of North Carolina for all years except 1940 and 1941. The property was sold in 1942 at a loss of \$3,500.00, and Mr. Sneed desires to take credit for this loss as a deduction from his 1942 return.

Section 322(10) of the Revenue Act of 1939, as amended, is as follows:

"In computing net income there shall be allowed as deductions the following items:

* * * * *

"10. Resident individuals and domestic corporations having an established business in another State, or investment in property in another State, may deduct the net income from such business or investment if such business or investment is in a State that levies a tax upon such net income. The deduction herein authorized shall not include income received by residents of this State and domestic corporations from personal services (except as provided in Section 325), stocks, bonds, notes, mortgages, securities, or bank or other deposits or credits, *nor in any case shall it operate to reduce the taxable income actually earned in this State or properly allocable as income earned in this State.*" (Italics added.)

In view of the above quoted statute, and since the State of Virginia levies an income tax, Mr. Sneed was clearly authorized to deduct income derived from his property in Virginia in computing his net income taxable in North Carolina. However, under prior rulings of this office, he is not authorized to reduce his taxable income earned in this State by deducting the amount of any loss in connection with the sale of the property owned in Virginia. The income from such property was not at any time taxable in North Carolina, and hence a loss on the sale of the property is not allowable.

Mr. Sneed is entitled to a refund of the taxes erroneously paid to the Commissioner on this out-of-state property for the year 1939. I regret to advise that refund of payments made for other years prior to 1939 is now barred by the three year statute of limitations. (Section 937 of the Revenue Act.)

FRANCHISE TAX; LIABILITY WHEN A FOREIGN CORPORATION REORGANIZES
AND BECOMES CHARTERED IN NORTH CAROLINA

27 May, 1943.

You have requested my opinion with regard to the franchise tax liability of the R. W. Eldridge Company. The facts in the case are as follows:

The R. W. Eldridge Company was originally a Vermont Corporation doing business in Charlotte, N. C. The stockholders decided to reorganize into a North Carolina corporation and on July 29, 1942, obtained a charter in North Carolina. There was no change in the stockholders or assets of the Company, and the North Carolina Corporation continued to operate on the same basis and at the same location as had the Vermont Corporation.

It appears that the Vermont Corporation had domesticated in North Carolina, filed a franchise tax report on July 23, 1942, and paid a tax of \$120.96, for the period beginning July 1, 1942 and ending June 30, 1943. Subsequent to that time the Department of Revenue assessed a franchise tax in the amount of \$112.21 against the newly chartered North Carolina Corporation for the period beginning July 29, 1942 and ending June 30, 1943. Counsel for the R. W. Eldridge Company protests the payment of this tax assessed against the newly formed North Carolina Corporation on the ground that it would place a double tax burden for the eleven month period beginning July 29, 1942, and ending June 30, 1943, on the same stockholders owning the same property and stock and carrying on the same type of business.

Section 210 of the Revenue Act of 1939, as amended, requires every corporation, domestic and foreign, incorporated or, by any Act, domesticated under the laws of this state, to file a return on or before July 31 of each year, covering its operations in this State for the year preceding. In compliance with this section the Vermont Corporation paid tax amounting to \$120.96 on July 23, 1942, as pointed out above.

Section 211 of the Revenue Act provides that no new corporation shall be permitted to do business in this State without filing a report with the Commissioner of Revenue, and that the Commissioner shall assess a franchise tax against the new corporation based on the amount of its issued and outstanding capital stock, surplus and undivided profits or such other factors as may be necessary. It was under this section that the Department of Revenue made the assessment of \$112.21, referred to above, against the newly created North Carolina corporation.

I am of the opinion that the R. W. Eldridge Company is liable for the payment of both of these assessments. Even though the stockholders and assets are the same there is no provision in the Revenue Act which grants relief in the case of such a reorganization. Under the express terms of the statute, both the Vermont corporation and the North Carolina corporation are liable for franchise taxes for the period of their existence. The taxpayer complains that if both taxes are collected, double taxation results. I am unable to agree with this position, since taxpayer is enjoying different privileges as a

domestic corporation than it did as a foreign corporation, and it is not unreasonable or illegal that it be taxed additionally for these new privileges. Further, the tax is levied against the corporation, not the stockholders, and there are two distinct legal entities involved.

LICENSE TAXES, SECTION 131; BAGATELLE TABLES, ETC.; "HIGH STRIKER"

3 June, 1943.

You have referred to me a letter from Mr. J. H. Burnett with regard to Mr. John Misuric's liability for license tax under Section 131 of the Revenue Act.

Mr. Burnett rents a lot at Carolina Beach to Mr. Misuric who uses the same to operate a "high striker" and other games for the summer months. The Commissioner of Revenue collected a ten dollar license fee for the "high striker" and each of the two games operated on the lot for the year 1942-1943. Mr. Burnett on behalf of his lessee inquires whether the latter is subject to the payment of this tax levied under Section 131 of the Revenue Act, contending that the games are only temporary concessions and are not operated at a "permanent location" within the meaning of Section 131. This section imposes a license tax for the privilege of operating certain amusements "at a permanent location."

It is necessary to determine the meaning of the word "permanent." Clearly, it is the opposite of transient and shifting, and yet it carries the idea not of absolute, but rather of practical continuity. For example, the Court in *Madison Coal Co. v. Hayes*, 215 Ill. 625, has defined a "permanent door" to mean one used indefinitely as long as it is necessary that it be maintained. Its meaning must be ascertained from the context of the law in which it is used. As is stated in 48 *Corpus Juris* at page 919, "the word is a relative one, and its signification depends upon the subject matter in connection with which it is employed."

In my opinion, an amusement device or concession operated at a permanent location under Section 131 of the Revenue Act is one which is operated at one place as long as the demand for the same exists. It does not move from place to place for weekly or monthly stands. It is a business venture which is established in one place with the intention of remaining there until circumstances are such that its continued operation at that location becomes unprofitable. The fact that it may stay only one month or less in one place does not exclude it from being an amusement operated at a permanent location within the meaning of the statute.

This view gains weight when Section 131 is considered in its relationship to Section 106 of the Revenue Act, which imposes a license tax on amusement ventures, traveling from place to place. The tax in Section 106 is levied at a weekly rate and is upon the concessionaire whose intention it is not to stay at one place until the profit realizable is exhausted and then discontinue operation entirely, but on the operator who is engaged in playing different locations and moving about. In my opinion permanency of location must be determined

by whether the amusement operator is engaged in the business of moving from place to place, or in the business of offering his amusements at one location, even for only a portion of a year. Any other interpretation of the word "permanent" would seem impractical of application.

I, therefore, conclude that the high striker and games are being operated by Mr. Misuric at a permanent location, and that he is liable for the tax imposed in Section 131 of each of his games and the "high striker."

TAXATION; INCOME; INTEREST ON REFUNDS FOR YEARS PRIOR TO 1939

7 June, 1943.

You state that you have assessed additional income tax and interest against the above named taxpayer for the years 1935, 1938, 1939 and 1941, and found refunds due the taxpayer for the years 1936 and 1940. In computing the refund for the year 1936 you did not add interest in view of the fact that the portion of Section 937 authorizing the payment of interest on refunds was not enacted until the General Assembly of 1939. See Public Laws 1939, c. 158, s. 938. The effective date of the 1939 Revenue Act was from and after March 24, 1939. You inquire whether you were correct in concluding that no interest should be added to any refunds for years prior to 1939.

This inquiry requires an interpretation of Section 937 as it appeared in the 1939 Revenue Act.

I find that this statute first appeared in the Revenue Acts of the State in the 1939 Act. Prior to this enactment refunds of taxes under the Revenue Act were governed by Section 7979(a) of the Consolidated Statutes which did not provide for the addition of interest to refunds. The exact question that must be determined is whether Section 937 of the Revenue Act of 1939 requires the addition of interest in every case where a refund is authorized after March 24, 1939, or only in those cases where the tax with respect to which the refund is due accrued or was levied after that date.

Prior to the Revenue Act of 1939, it had been the custom in this State for a complete new Revenue Act to be enacted at each biennial session of the General Assembly. In 1939 the General Assembly departed from this custom and enacted the Revenue Act of 1939 as a continuing act subject to amendment by subsequent sessions of the Legislature.

Taxpayer's income tax liability for the year 1936 was governed by the Revenue Act of 1935. (Public Laws 1935, c. 371.) The intended function of that Act was clearly to levy taxes for the biennium 1935-1937, and during the effective period of the 1935 Revenue Act refunds were governed by C. S. 7979(a) and no interest was allowable thereon. The preamble of the Revenue Act of 1939 declares that it was the purpose of the Act to raise and provide revenue "during the next biennium and each biennium thereafter."

During the period when the Revenue Acts were reenacted biennially it seems clearly to have been the legislative intent that all questions

relating to tax liability on taxes levied under each biennial act should be determined by reference to that biennial act. After the expiration of the biennium during which the Act was effective the Act still continued to be controlling with reference to liabilities which had arisen thereunder. For example, see Section 509 of the Revenue Act of 1935 and Section 835 of the Revenue Act of 1937. These statutes provide in effect that while the Revenue Act in which each appears constitutes authority for the imposition of the taxes therein levied said Act does not affect prior liabilities and that such prior "taxes and penalties may be collected, and criminal offenses prosecuted under such law existing at the time of the ratification of this Act, notwithstanding this repeal."

This continuation of existing laws for the purpose of the ultimate settlement of tax liabilities accruing thereunder was made more explicit in the 1941 amendments to the Revenue Act. See Public Laws 1941, c. 50, s. 11.

A statute similar to Section 509 of the Revenue Act of 1935 and to Section 835 of the Revenue Act of 1937 was contained in the Revenue Act of 1939 as Section 935.

I, therefore, conclude that it was the legislative intent that the adjustment of all tax liabilities accruing prior to the Revenue Act of 1939 should be controlled and governed by the laws in effect at the time such taxes were levied in the absence of any express legislative declaration to the contrary. I interpret Section 937 to authorize the addition of interest to refunds only with respect to refunds of taxes levied by the Revenue Act of 1939, as amended.

This conclusion is in harmony with the uniform administrative interpretation of Section 937. It is a well established rule of statutory construction that the administrative interpretation is entitled to weight. *Cannon v. Maxwell*, 205 N. C. 420; *Powell v. Maxwell*, 210 N. C. 211.

I therefore advise that you were correct in not adding interest to these refunds.

FRANCHISE TAX; DEDUCTION OF ITEM OF APPRECIATION IN VALUE OF
PROPERTY NO LONGER OWNED BY CORPORATION

16 June, 1943.

You have requested my opinion upon the franchise tax liability of the Standard Hosiery Mills, Inc., of Alamance, N. C., in respect to the following matter.

During the year 1928, the taxpayer, in order to better its financial statement, arbitrarily increased the value of its plant in the amount of \$49,593.43. Since then the major portion of the property involved has been disposed of. The account does not represent any allocation of earned surplus, paid-in surplus, or capital paid-in, and is nothing but an arbitrary increasing of the plant account above cost. However, in filing its 1942 franchise tax return the Standard Hosiery Mills, Inc., included this appraised value or write-up of \$49,593.43 as an actual part of its total assets as shown by the records and books of the

corporation, but then deducted said amount from its surplus in determining the base for its 1942 franchise tax liability. The Commissioner of Revenue disallowed the deduction and billed the corporation additional tax in the amount of \$88.09 for the deficiency which resulted from this deduction of appreciation from its surplus.

The question for consideration is whether the corporation is entitled to this deduction.

Section 210(1) of the Revenue Act of 1939, as amended, provides in part as follows:

"(1) Every corporation, domestic and foreign, incorporated or, by any Act, domesticated under the laws of this State, except as otherwise provided in this article or schedule, shall, on or before the thirty-first day of July of each year, make and deliver to the Commissioner of Revenue in such form as he may prescribe a full, accurate and complete report and statement verified by the oath of its duly authorized officers, containing such facts and information as may be required by the Commissioner of Revenue *as shown by the books and records of the corporation as at the close of its last calendar or fiscal year next preceding July thirty-first of the year in which report is due.*" (Italics added.)

Further, Subdivision (2) of the same section provides as follows:

"(2) *Every such corporation taxed under this section shall determine the total amount of its issued and outstanding capital stock, surplus and undivided profits; no reservation or allocation from surplus or undivided profits shall be allowed other than for definite and accrued legal liabilities, except as herein provided; . . .* (Italics added.)

In order to carry out the mandate of these statutory provisions, the Commissioner of Revenue has prescribed returns to be used by corporations in reporting their franchise tax liability to the State. These returns require that the corporation make a statement of its capital stock, surplus and undivided profits, an analysis of the surplus account, and a statement of comparative balance sheet.

The statutes referred to above, and the returns prescribed by the Commissioner require that the franchise tax returns shall be based on the books and records of the corporation; and Section 210(2) expressly prohibits any reservation or allocation from surplus or undivided profits except for definite and accrued legal liabilities.

I am of the opinion that the taxpayer is bound by the inclusion in the corporate surplus of the item representing appreciation of plant and that the Commissioner has no authority to exclude this item from the tax base. The books and records of taxpayer are controlling with reference to the valuation of its surplus. Taxpayer could have removed this item from its books and records if it should not have been continued to be carried as an asset thereon. Since it did not do so, the Commissioner is required under the law to include the item in the tax base.

Taxpayer contends that the inclusion of the item in the tax base would be discriminatory in that taxpayer would be forced to pay tax on a non-existent asset whereas other taxpayers would base their

tax on capital actually paid-in, earned surplus, or paid-in surplus. I am unable to agree with this contention in view of the fact that the statute bases the tax upon what is disclosed by the books and records of the corporation, and it is within the taxpayer's power to avoid payment of tax on an arbitrary write-up in the value of property by electing not to make such write-up. Taxpayer is deemed to be advertent to the statute which would require such write-up to be included in the tax base if it was disclosed by the books and records of the corporation.

The view taken in this letter is borne out by the uniform administrative interpretation of the law by the Commissioner of Revenue over a course of years, and this interpretation is entitled to weight in interpreting the intent of the law. *Cannon v. Maxwell*, 205 N. C. 420.

REVENUE ACT, SEC. 707; INTANGIBLE TAXES; TAXABILITY OF INSURANCE FUNDS PAID OVER TO AND HELD BY BANK AS TRUSTEE

17 June, 1943.

You have requested my opinion upon the following matter.

Section 707 of the Revenue Act of 1939, as amended, levies an intangibles tax of 25c on every \$100 of funds on deposit with insurance companies on December 31 of each year belonging to or held in trust for a resident of this State, or having acquired a taxable situs in this State, if such funds are subject to withdrawal by the party or parties entitled thereto. The statute contains the following provision:

"Provided, that in the determination of the tax liability under this section the first twenty thousand dollars (\$20,000.00) of such funds on deposit or paid over to and held by a bank as Trustee shall be disregarded where such funds on deposit are payable wholly and exclusively to a widow and/or children of the person deceased whose death created such funds on deposit."

With respect to the application of this proviso to a bank-trustee, the Commissioner of Revenue has ruled that the \$20,000.00 exemption is available only when the funds received from an insurance company by the bank-trustee are held by the bank-trustee in the form of the actual funds so received; and that when said funds are invested by the bank-trustee in stocks, bonds, mortgages or other securities, the exemption is not available. You request my opinion whether this construction of the statute is correct.

Unfortunately the statute itself throws very little light upon the legislative intent with respect to the exemption applicable to funds in the hands of the bank-trustee. The wording of the statute indicates the probability that the words "or paid over to and held by a bank as trustee" were inserted in the proviso by amendment at some stage of the legislative process. The Commissioner of Revenue, evidently proceeding upon the well-established principle that exemptions for taxation are to be strictly construed, placed a literal construction upon the words referred to. The answer to the question

whether the Commissioner's interpretation is sound must be sought in the light of the evident purposes of the provision with reference to funds held by banks as trustees.

The proviso in Section 707 was inserted by Public Laws 1941, c. 50, s. 8(d). The application of the proviso to funds left with insurance companies is clear. If such funds are left with the insurance company they may be invested by the company with profit. Nothing in the Act defines "funds on deposit" as meaning funds actually held in cash, or in uninvested form, by the insurance company. On the contrary, "funds on deposit" are merely defined as "funds accrued or accruing by virtue of the death of the insured or the original maturity of a policy contract where the party or parties entitled to receive such funds might withdraw same at their option upon stipulated notice." This definition obviously allows the insurance companies, pursuant to well-established practices, to invest the funds left with them, and a portion of the interest and dividends from such investments enhances the value of the funds left with the insurance companies and accrues to the ultimate benefit of the persons entitled to said funds.

There is every reason to believe that the purpose of the words "or paid over to and held by a bank as trustee" was to place banks who are trustees and who are holding funds received from insurance companies on behalf of the widow and/or children of the decedent whose death created such funds on exactly the same footing as insurance companies are placed by the statute. Obviously a trustee-bank receiving such funds from an insurance company would not, in carrying out the management of the trust, leave such funds uninvested and unproductive of any income. The trustee could not afford to leave the funds uninvested merely to take advantage of the exemption.

The proviso is apparently based upon a desire to relieve widows and children in the circumstances referred to from the burden of the intangibles tax with respect to the first \$20,000.00.

To hold that the exemption is applicable only when the funds are held in uninvested form by the bank is in effect to penalize the beneficiaries of the trust rather than to further the purpose of the statute to aid them, since (unlike the situation where funds are left with insurance companies) their enjoyment of the exemption would be restricted to a situation where their funds are not earning them any income. I cannot believe that the General Assembly intended any such result.

While the statute is regrettably vague in respect to the matter under discussion, in my opinion the General Assembly intended that the \$20,000.00 exemption should apply to all funds paid over by an insurance company to a bank as trustee whether said funds be held by the bank as cash or invested by the bank in securities in the administration of the trust.

I would suggest that you recommend a clarification of this statute at the next session of the General Assembly. At that time certain grave constitutional questions in connection with the statute which need not be considered here should also be studied.

ESTATE OF MRS. ANNIE C. ALLISON; INHERITANCE TAXES; THE TRANSFER
OF OIL AND GAS RIGHTS IN PROPERTY SITUATED IN THE
STATE OF LOUISIANA

19 June, 1943.

You have requested my opinion upon the following matter.

There was included in the gross estate of the above named decedent "one-fourth interest, mineral, oil and gas rights in 904 acres in Parish of Morehouse, State of Louisiana," valued at \$2,500.00. Inheritance tax has been duly paid on the basis of including this item in the gross estate and the personnel representative now raises the question whether such item was properly includable and whether a refund is proper.

The interest referred to represented the interest of the decedent under a certain "oil and gas lease contract" pursuant to which the decedent and certain other persons leased to one S. D. Hunter the franchise or right to drill for and produce oil and gas upon certain real estate owned by the lessors in the State of Louisiana. As consideration for the lease the lessors reserved the following as royalties:

(a) One-eighth (1/8) of all gas produced and saved upon the premises or, if such gas is sold, 1/9 of the gross sales price thereof.

(b) One-eighth (1/8) of any casing head gas, gasoline, and saved marketable by-products in kind, or 1/8 of the gross proceeds thereof.

(c) One-eighth (1/8) of the gross proceeds from the sale of gas and gasoline extracted from gas wells and in addition 1/8 of the gross proceeds from the sale of the marketable by-products resulting, or 1/8 of the gross gasoline, as extracted, in kind.

(d) The privilege at the cost of the lessors to make connections with and use gas from the well free of charge for supplying a plantation of the lessor.

(e) One-sixth (1/6) of the oil produced.

If the rights of the decedent under the lease constitute real estate their value is not subject to inheritance taxation in North Carolina since the property would be beyond the taxing jurisdiction of the State. See C.C.H., Inheritance, Estate and Gift Tax Service, Vol. 4, Par. 1605. Further, if the rights constitute tangible personal property they are beyond the jurisdiction of the State of North Carolina for inheritance tax purposes. *Frick v. Pennsylvania*, 268 U. S. 473. However, if such rights constitute intangible personal property they may validly be subjected to inheritance taxation in this State. The state of a decedent's domicile may tax the succession to intangible personal property even though such property is located beyond the territorial limits of the State. Annotation, 42 A.L.R. 316 and 87 A.L.R. 741, *Kidder*, State Inheritance Taxation and Taxability of Trust (1934), p. 22, et seq.; *Blodgett v. Silberman*, 277 U. S. 1.

Thus, it is essential to determine the legal nature of the decedent's interest under the lease.

A reading of the lease reveals that the decedent's interest was confined to gas and oil produced, saved, utilized, or sold. It is well established that when gas or oil are extracted from the soil and

brought to the surface they become personal property. 24 Am. Jur., p. 519 and 520, and cases there cited. Thus, it is clear that the decedent's rights did not constitute, in any view of the matter, real property and the question is narrowed to whether she owned tangible or intangible personal property.

The lease refers to the decedent's rights therein as "royalties." A royalty in connection with an oil and gas lease is defined in 64 Corpus Juris p. 1107, as follows:

"... A share of the product or profit reserved by the owner for permitting another to use the property; the amount reserved or the rental to be paid the original owner of the whole estate; the compensation for the privilege or rights created by the lease; the compensation provided for the privilege of drilling for oil and gas, and consists of a share in the oil and gas produced under existing leases; the share of the product or profit paid to the owner of the property. As applied to an existing lease, a share in the oil and gas produced, but the term does not include a perpetual interest in the oil and gas in the ground."

It is assumed from the information now before me that the value of decedent's interest as set forth in the inheritance tax inventory did not include the value of any gas or oil which had been produced and was available to decedent either in cash or in the form of the proceeds thereof. Apparently the valuation was based upon her right to receive any gas and oil that might be produced or the proceeds thereof, or the right to use the gas and oil in the plantation in Louisiana. If this assumption is correct, I am of the opinion that the decedent's interest constituted intangible personal property. *Her right to receive* was an intangible asset and was therefore properly includable in the gross estate.

SALES AND USE TAXES; LIABILITY OF SUBCONTRACTOR WHO ENTERED
INTO CONTRACT WITH FEDERAL CONTRACTOR PRIOR TO EFFECTIVE
DATE OF REGULATION IMPOSING TAXES ON SALES TO
FEDERAL CONTRACTORS, BUT MADE DELIVERIES
AFTER SAID DATE; CAROLINA SALES
CORPORATION, GREENVILLE, N. C.

7 July, 1943.

You have referred to me the question of the liability of the Carolina Sales Corporation (hereinafter referred to as "taxpayer") for sales and use taxes on account of two contracts with a cost-plus-a-fixed-fee contractor with the federal government to sell electric refrigerators and furnish and install oil heaters in a Defense Housing Project. Taxpayer entered its bid on one of the contracts on 12 November, 1941, and the contract was dated 27 November, 1941-10 December, 1941. On the other contract, taxpayer entered its bid on 13 October, 1941, and the date of the contract was 23 October, 1941. However, deliveries and invoices on some of the property were not made, and a portion of the purchase price received, until January and February 1942, which the contract allowed. These sub-contracts were on the lump-sum basis. At the time of entering into these contracts, the

Commissioner of Revenue, acting upon an opinion of the Attorney General, was not collecting sales and use taxes on sales to or purchases by any contractors with the federal government. On 10 November, 1941, the United States Supreme Court handed down decisions in the cases of *Alabama v. King & Bozer*, 314 U. S. 1, and *Curry v. United States*, 314 U. S. 14, holding that a cost-plus contractor with the federal government was not an agent of the federal government, but an independent purchaser, and consequently that sales to and purchases by such a contractor are taxable. The Commissioner of Revenue, relying on these decisions, promulgated a regulation effective 1 January, 1942, to the effect that sales to and purchases by a cost-plus contractor with the federal government were subject to sales and use taxes from and after that date. The Commissioner assessed taxpayer with taxes with respect to the property invoiced and delivered after 1 January, 1942, and taxpayer claims immunity upon the ground that the contract was entered into prior to the effective date of the regulation, and does not contemplate the payment of state sales and use taxes. You desire my opinion upon whether the assessment may legally be made.

The regulation in question provides in part as follows:

"From and after 1 January, 1942, the North Carolina Department of Revenue will impose and collect the sales and use taxes on all sales to and purchases by contractors under contract with the federal government on a cost-plus-a-fixed-fee basis of all tangible personal property which is not exempted from such taxation by the following statutory provisions. . . ."

In the situation under consideration, prior to the effective date of this regulation, the taxpayer had bid upon the property upon a lump-sum basis which did not include tax, and had entered into contracts for the sale and installation of the equipment. The contracts provided for some deliveries after 1 January, 1942. However, since the contracts of sale were entered into prior to 1 January, 1942, calling for the delivery of the specific equipment, it is my opinion that the sales and purchases were effected prior to 1 January, 1942, the effective date of the regulation, and the fact that delivery was made after said date does not render the sales and purchases taxable under the regulation in question. In my opinion the regulation was intended to subject to the tax only those sales in which all the essential elements of sale—the offer to sell, the acceptance of the offer, and the consequent payment of the purchase price by the vendee and delivery of property by the vendor—occurred after 1 January, 1942. In the case under consideration the offer to sell and the acceptance of the offer occurred prior to the effective date of the regulation, and some of the purchase price was paid and some deliveries were made prior to that date. The contract of sale was complete, and the purchase price had been fixed. I do not think that the fact that some of the deliveries were made, and the balance of the purchase price was paid, after the effective date of the regulation has the effect of constituting the transactions "sales and purchases" after 1

January, 1942, within the meaning of the regulation. To hold otherwise would be to say that certain elements of a sale, i.e., delivery and payment of purchase price, in themselves constituted a sale and purchase, and such a view would obviously ignore the heart of the transaction—the sales agreement, which was fully consummated prior to the effective date of the regulation, and which controlled the rights and liabilities of both the vendor and vendee.

I accordingly advise that the assessment made against taxpayer in connection with this matter should be cancelled.

SALES AND USE TAXES; SALES TO AND PURCHASES BY COST-PLUS-A-FIXED-FEE CONTRACTORS WITH THE NAVY DEPARTMENT

9 July, 1943.

You have requested my opinion upon the following matter.

The Navy Department has, between 1941 and the present, entered into certain cost-plus-a-fixed-fee contracts with contractors for the construction in North Carolina of projects essential to national defense and the war program.

From time to time the question has arisen whether sales to and purchases by such cost-plus contractors are subject to sales and use taxes levied by Schedules E and I of the North Carolina Revenue Act of 1939, as amended.

The Commissioner of Revenue, relying upon the decisions in *Alabama v. King and Boozer*, 314 U. S. 1, and *Curry v. United States*, 314 U. S. 14, has thus far taken the position that the State of North Carolina may validly impose its sales and use taxes upon the sales and purchases in question. This position has been predicated upon the conclusion that the contractors are not agents of the federal government, but are independent contractors by virtue of the reasoning of the *King and Boozer* and *Curry* decisions.

The Navy Department has requested the Commissioner to depart from this position on the ground that the Navy contracts, together with the purchase orders issued thereunder, create different legal consequences from the War Department contracts which were before the Court in the *King and Boozer* and *Curry* cases. More specifically the Navy Department contends that the prime contracts, which are phrased in rather general terms, contemplate the execution of auxiliary contracts of sale, consisting of the purchase orders, their acceptance, and the delivery of property thereunder; and that since the purchase orders contain certain conditions indicating that the sale is to the federal government through the contractor as purchasing agent, the sale and purchase is exempt from state sales and use taxes under Section 406(e) of the Revenue Act construed with decisions of the United States Supreme Court holding that state taxes may not be validly imposed on direct sales to and purchases by the federal government.

You desire my opinion upon whether the contentions of the Navy Department are legally tenable. The answer to your inquiry requires an analysis of the prime contracts and purchase orders issued there-

under. The Navy Department has submitted to this office copies of the following prime contracts being performed in North Carolina, together with purchase order forms which have been used in connection therewith:

1. NOy-4750, for Marine Corps Training Facilities, Marine Barracks, New River, N. C., entered into on April 21, 1941.
2. NOy-4956, for construction of Lighter-Than-Air-Base near Elizabeth City, N. C., entered into July 25, 1941.
3. NOy-4957, for Marine Corps Air Base on Neuse River, N. C., entered into July 28, 1941.
4. NOy-5264, for Station Telephone Facilities at the Marine Air Base, Cherry Point, N. C., entered into March 10, 1942.
5. NOy-5699, for Marine Glider Base, at Edenton, N. C., entered into August 11, 1942.
6. NOy-6007, for construction of various facilities at Camp LeJeune, New River, N. C., entered into April 7, 1943.

These prime contracts, with the exception of contract NOy-6007, contain similar provisions regarding the relationship between the contractor and the federal government, the purchase of property for fulfillment of the contracts, passage of title, compensation of the contractor, and like matters.

These prime contracts are entered into between the United States of America, represented by the Chief of the Bureau of Yards and Docks (designated the "Contracting Officer"), who signs the contracts, and the contractors.

Section 1 of the contracts provides that the federal government will designate "an officer of the Civil Engineer Corps, U. S. Navy, as 'officer in charge,' who, under the direction of the contracting officer, shall have complete charge, on behalf of the Government of the work under this contract in the field . . . and for the purpose of safeguarding the interest of the United States . . . and making decisions within the scope of his delegated authority and not in conflict with any provision of this contract."

Article 7 stipulates that "the contractors shall provide all plant and equipment required for the accomplishment of the work under this contract, but no article or piece of equipment costing in excess of \$200 shall be purchased and none shall be rented at a rental rate in excess of \$100 per month except after prior approval in writing by the Contracting Officer or a duly authorized representative."

Article 7 further provides that "the title to each item of plant and equipment purchased for the Government passes to the Government when acceptance of title is authorized or approved by the Contracting Officer or a duly authorized representative."

Article 9 provides that "all materials required for the accomplishment of the work under this contract shall be provided by the Contractors, including materials, articles and supplies required for temporary use and such as may be consumed in use." This article further provides that no purchase contract or order in excess of \$500 shall be made or placed without the prior approval of the Contracting Officer or his authorized representative, except that where, in order to expedite delivery, the officer-in-charge may authorize the contractor

to order materials estimated not to cost more than \$2,500, without prior approval of the Contracting Officer or his representative.

By Article 25, the federal government agrees to pay the contractors the sum of the actual net cost to the contractors of the materials furnished and services and labor actually performed under the contract plus a fee stipulated in the contract, "it being the general intent and understanding by and between the parties to this contract that the contractors shall be reimbursed for all out-of-pocket expenditures made by the Contractors for and on account of the contract which are specifically or impliedly authorized, sanctioned, or approved by the Contracting Officer or by his direction. . . ."

Paragraph (m) of Article 25 provides that a legitimate item of "actual net cost," for which the federal government will reimburse the contractor, is "the net amount . . . any state . . . taxes, fees, or charges, which the contractor may be required, on account of this contract, to pay on or for any . . . materials . . . under any applicable valid law or regulation issued by competent authority."

Article 26 provides that at not less than seven day intervals the contractor may submit to the federal government "payment requisitions" covering duly certified and approved paid pay rolls, invoices, bills, etc., including bill for the prescribed fixed fee, and the government will pay said requisitions as soon as practicable, with certain exceptions relating to deferment of payment.

The foregoing provisions of the prime contracts, considered without reference to purchase orders, indicate that the legal relationship between the government and the contractors is as follows:

The contractor undertakes to purchase and pay for from its own funds authorized materials for the performance of the contract; the title to the materials passes to the government when accepted, but such acceptance may take place after sale to the contractor; the government reimburses the contractor for his purchases of materials at stated intervals.

I think it is clear that these provisions of the prime contract, considered alone, do not constitute the contractors agents of the federal government in purchasing materials, but constitute the contractors independent purchasers under the test referred to by the Court in the King and Boozer decision which is as applicable under the North Carolina statute as under the Alabama statute. That test is as follows (314 U. S. at 10):

" . . . The purchaser of tangible goods who is subjected to the tax measured by the sales price is the person who orders and pays for them when the sale is for cash and who is legally obligated to pay for them if the sale is on credit."

Applying this test to the contractual provisions referred to above, it is, I think, beyond dispute that the contractors, so far as the contract itself is concerned, are independent purchasers since the vendors of materials used in fulfillment of the contract look to the contractors alone for payment, and acquire no right to require payment from the federal government.

However, the Navy Department contends that the question of liability is not to be determined by reference to the contracts alone, which ordinarily are controlling on the question of agency or lack of agency as between the contracting parties, but that the purchase orders must be brought into the picture as auxiliary contracts authorized by the prime contract, and creating an agency relationship so far as the purchase of materials is concerned.

The purchase orders issued under the contracts in question are not uniform, and have been changed from time to time. However they do have the following common features: each is an order from the contractor, or from the Navy Department by the contractor, to the vendor for materials needed for fulfillment of the contract; each directs that the invoices, packing lists and bills of lading be mailed to the contractor; each directs that the materials be shipped to the contractor of the Navy "care of" the contractor; each indicates the number of the contract under which the materials are purchased; each is signed by the contractor and is "approved for U. S. Government" by the officer-in-charge, or for the officer-in-charge, or by direction of the officer-in-charge.

The substantial differences in the purchase order forms appear in the "Conditions" printed on the back of the orders. With reference to the question now under consideration, there are two general types of "Conditions" which have been used under the contracts referred to above.

(1) One type of purchase order contains the following among the "Conditions":

"5. The materials covered by this order are for the exclusive use of the United States and title to the same vests in the United States upon their delivery to the contractor whose name appears on the face of this purchase order. State and local taxes are not applicable to this purchase which is for the sole account of the United States. Invoice for payment shall be submitted to the contractors to be paid and charged to the account of the United States."

(2) The other type of purchase order contains these conditions:

"2. This purchase is made by the Government, and the Government shall be obligated to the vendors for the purchase price, but the contractor shall handle all payments therefor on behalf of the Government. The vendor agrees to make demand or claim for payment of the purchase price from the Government through the medium of the contractor. All purchases hereunder are made for the account of the Government, and all title, delivery and transportation papers shall be made out in the name of the Government, in care of the Contractor."

"3. Title to all materials and supplies purchased hereunder shall vest in the United States Government upon their delivery to and acceptance by a representative of the Government or the Contractor."

Purchase orders of this type are headed:

"Bureau of Yards & Docks
Navy Department

By....."
(Name of Contractor)

Further, the Contractor signs the purchase order as "Purchasing Agent."

It is now necessary to determine whether either type of these purchase orders is in effect an auxiliary contract having the effect of making the sale a sale to the federal government through the contractor as its purchasing agent.

It seems clear that the first type of purchase order referred to above does not have the effect of effecting a sale to the federal government, even if it is to be regarded as a separate contract approved by the federal government. Under the test of the King & Boozer case, the purchaser is the party to whom the vendor extends credit. There is nothing in the first type of purchase order which pledges the credit of the government to the vendor. The quoted condition states that the property is for the exclusive use of the federal government, but this is nothing more than a statement of the ultimate disposition of the property. Further, even the fact that title vests in the federal government upon delivery to the contractor does not mean that the federal government is obligated to pay for the materials. Indeed, the condition states that "invoice for payment shall be submitted to the contractors to be paid and charged to the account of the United States." This obviously means that vendors are to look to the contractor, and no further, for payment. The charging to the account of the United States is to be done by the contractors, not the vendors, and is a matter wholly between the contractors and the federal government governed by the prime contract. If a contractor using this type of purchase order would default in payment, his vendors would have no right of action against the government. The wording of the condition carefully skirts around any statement of governmental liability for the purchase, and in my opinion is not sufficient to constitute the contractor a purchaser within the meaning of the test in the King & Boozer case.

The second type of purchase order presents another question. The wording of the condition expressly states that the purchase "is made by the Government, and the Government shall be obligated to the vendors for the purchase price, but the Contractor shall handle all payments on behalf of the Government." This is a clear commitment that the vendor may, if necessary, look to the federal government for payment. It must therefore be asked whether federal government has authoritatively given its approval and consent to this commitment.

As has been seen, there is nothing in the prime contract which authorizes the contractor to pledge the credit of the federal government. Therefore, if that credit has been validly pledged, it must have been through the authority of the "officer-in-charge," who approves each purchase order for the United States Government.

Article 1 of the contracts, which provides for the appointment of the officer-in-charge, does not expressly give him the authority to pledge the credit of the Government on the purchase orders, and no such express authority is elsewhere found in the contracts. Is such authority to be implied?

The prime contract is entered into on behalf of the federal government by the Chief of the Bureau of Yards & Docks, and the purchase order forms, including the "Conditions" referred to, are prescribed and prepared under the direction of the same agency. The forms contain an approval to be signed by the officer-in-charge, who has general authority, under the direction of the Chief of the Bureau of Yards and Docks, to supervise and manage the contract work on behalf of the government. I therefore conclude that when an "officer-in-charge" approves a purchase order containing a statement that the government is obligated to the vendor for the purchase price, he has been duly authorized to do so, and his signature is entitled to credit as a signature authorized by the Chief of the Bureau of Yards and Docks, who prescribed the purchase order form and who has the authority to pledge the credit of the government.

Accordingly, I advise that sales to and purchases by contractors under the contracts hereinbefore enumerated are exempt from state sales and use taxes if the purchase order forms by which the materials in question were ordered contain the following "conditions":

"2. This purchase is made by the Government, and the Government shall be obligated to the vendors for the purchase price, but the Contractor shall handle all payments therefor on behalf of the Government. The vendor agrees to make demand or claim for payment of the purchase price from the Government through the medium of the Contractor. All purchases hereunder are made for the account of the Government, and all title, delivery and transportation papers shall be made out in the name of the Government, in care of the Contractor."

"3. Title to all materials and supplies purchased hereunder shall vest in the United States Government upon their delivery to and acceptance by a representative of the Government or the Contractor."

It should be noted, however, that many sales and purchases were made under these contracts on purchase order forms not containing the conditions quoted in the last paragraph, and such sales and purchases are not exempt from taxation.

Contract NOy-6007, unlike the other contracts considered above, is explicit in constituting the Contractor the purchasing agent of the Government, and in providing that purchases are made by the Government and that the Government shall be obligated to the vendors for the purchase price. The purchase orders used under this Contract are of the second type, and therefore sales to and purchases by contractors under this contract are, in my opinion, exempt from sales and use taxes.

This opinion is not to be construed as holding exempt any sales or purchases under any contracts other than those referred to in this letter.

SALES & USE TAXES; EXEMPTIONS OF SALES OF POISON TO FARMERS
FOR USE IN MAKING CROPS

6 August, 1943.

In a recent conference with Mr. Harry Caldwell and Mr. Randall Etheridge the question was raised whether sales of poison to farmers, which is used by the farmers in spraying their growing crops for the purpose of killing pests which endanger the crops, is exempt from the North Carolina Sales & Use taxes. It was suggested at that conference that such sales are exempt by analogy to the provision found in Section 404 of the Revenue Act, which classifies as a wholesale sale, and therefore as exempt from the retail tax, "a sale of tangible personal property to a manufacturer which enters into or becomes an ingredient or component part of the tangible personal property which is manufactured."

There is no specific exemption in the Revenue Act which would exempt sales of poison, and no exemption is available unless it may be found in the provision of Section 404 referred to above.

I am of the opinion that the quoted provision of Section 404 does not apply to the sales of poison under consideration for two reasons:

(1) The exemption specifically applies only to manufacturers, and the generally accepted definition of a manufacturer excludes a farmer. The term "manufacturer" usually and customarily refers to one who is engaged in the business of making or fabricating, either by hand or machinery, materials into wares or products. As pointed out in 38 Corpus Juris, p. 974, "The primary meaning of the word 'manufacture' is something made by the hand, as distinguished from a natural growth. 'Manufacture' ordinarily refers to artificial products of human industry."

(2) It is my opinion that poison does not enter into or become a component part of a farm product within the meaning of the statute referred to. It seems to me that the poison is used or consumed by the farmer in order to produce his crop in the same sense that he would use farm tractors or other farm equipment.

The poison makes possible the healthy growth of the crop but does not enter into and become a component part of the finished product.

For these reasons I am of the opinion that sales of poison to farmers for use in making their crops are retail sales, and subject to the retail Sales Tax or Use Tax.

INTANGIBLE TAX; DOMICILE OF PERSONS IN MILITARY SERVICE

12 August, 1943.

You have requested my opinion as to whether Lt. Colonel F. R. Fleming is a resident of North Carolina so as to be subject to the intangible tax imposed in Schedule H of the Revenue Act.

It appears that Lt. Colonel Fleming resided in Statesville, N. C., prior to September 16, 1940. Since that date he has been on active duty with the military forces, and has been stationed in the States of New Hampshire, New York, South Carolina, Texas and Connecticut. He states that he now maintains no residence in Statesville and owns no property there, and therefore thinks that he is not a resident of North Carolina for intangible tax purposes. However, there

is no evidence to indicate that Lt. Colonel Fleming has taken any action to change his domicile. He left the State of North Carolina under military orders.

The Intangible Tax Article (Article VIII, Schedule H, of the Revenue Act) contains no definition of the word "resident" for intangible tax purposes. However, it is clear that a person domiciled in the State would be subject to the imposition of this tax. *Borland v. Boston*, 132 Mass. 89; *Cooper v. Commonwealth*, 121 Va. 338. Domicile has been defined as being that place where a person has his true, fixed, permanent home and principal establishment, to which, whenever he is absent, he has the intention of returning. *Anderson v. Anderson*, 42 Vt. 350. It is a person's legal residence as distinguished from his temporary place of abode; or his home, as distinguished from a place to which business or pleasure may temporarily call him. *Salem v. Lyme*, 29 Conn. 74. According to the facts presented, Lt. Colonel Fleming was domiciled in North Carolina before he entered the armed services. The question, then, is whether he has changed his domicile since his induction into the Army.

The usual rule is that one does not become a nonresident by leaving the state to engage in temporary employment elsewhere. Also, there is authority for the contention that a person in the armed forces during war time is not competent to change his domicile.

Kennon on Domicile and Residence, in Section 261 at page 468, contains this statement:

"It is a well established principle of law that a domicile of choice can be acquired only by one who is competent and free to choose. An officer who is subject to removal to another station at any moment by order of his superior is hardly in a position to say that this or that place shall be his permanent domicile."

As to what constitutes a change of domicile under the law of North Carolina, Chief Justice Stacy speaking for the Court in *In Re Martin*, 185 N. C. 472, lays down the following rule:

"Domicile is a question of fact and intention. Hence to effect a change of domicile there must be an actual abandonment of the first domicile, coupled with an intention not to return to it, and there must be a new domicile acquired by actual residence at another place, or within another jurisdiction, coupled with the intention of making the last acquired residence a permanent home."

Lt. Colonel Fleming has offered no evidence which indicates that he intended to change his domicile to another jurisdiction and since there is doubt that a person in the armed services is competent to effect a change in domicile while acting under the orders of the War Department, except under unusual circumstances not shown in this case, it is my opinion that under the above cited authorities he is still domiciled in North Carolina and is therefore subject to the intangible tax imposed by this State.

REVENUE ACT, SECTION 127; INDUSTRIAL CAFETERIA; FAIRCHILD
AIRCRAFT

25 August, 1943.

You have requested my opinion on the question whether Fairchild Aircraft, at Burlington, is liable for a privilege tax under Section 127 of the Revenue Act on account of the cafeteria maintained at its plant for the convenience of its employees. You have referred to me a copy of a lease agreement entered into between Fairchild Aircraft and Marvin S. Turner with respect to the operation of the cafeteria.

Briefly summarized, the essential provisions of the lease agreement are that the lessor will furnish the lessee with the premises, for a rental of one dollar a year, and with necessary equipment, for one per cent of the gross receipts; that the lessee will operate the cafeteria in accordance with the agreement and charge for meals on a stated basis; that the lessee will be allowed as remuneration four per cent of the gross receipts of the business subject to a maximum compensation of \$800.00 a month; that the net proceeds above operating expenses and remuneration of the lessee shall be applied to effect a decrease in the cost of meals served.

A reading of the lease reveals that operation of the cafeteria is to be conducted by the lessee. The tax in Section 127 falls upon those "engaged in the business of operating" a cafeteria. Therefore, Fairchild Aircraft would not be liable for the tax. In this view of the matter, it is not necessary to consider whether the cafeteria is entitled to exemption under the proviso relating to the maintenance of non-profit cafeterias. Of course, the lessee would be liable for the tax since he is operating the cafeteria for profit.

BEHR-MANNING CORPORATION; INCOME TAXES; INCLUSION OF CERTAIN
ITEMS AS BUSINESS INCOME

28 August, 1943.

You have referred to me your correspondence with the Behr-Manning Corporation and its counsel, Messrs. McKercher and Link, with the request that I advise you with regard to the protest made by the taxpayer that certain items should be excluded from the gross income of the corporation in arriving at the taxable proportion of income in North Carolina.

It appears that the taxpayer is a New York corporation engaged in the business of manufacturing and selling coated abrasives, etc. Taxpayer maintains a selling branch in North Carolina. The taxpayer objects to your assessment based upon an inclusion in its gross income of the following:

- (1) Administrative service credits which consist of administrative departmental charges transferred to manufacturing costs for costs record purposes.
- (2) Cash discount.
- (3) Workmen's Compensation dividends for previous years.
- (4) Gain on sale of property.
- (5) Royalties paid by other manufacturers licensed to use taxpayers patented processes. No such licensees are located in North Carolina.

Items 1, 2, and 3 arose in connection with the manufacturing aspect of taxpayer's business and taxpayer contends that since its business in North Carolina is purely a sales business the items referred to should be excluded from income before application of the allocation formula. Taxpayer apparently relies chiefly upon the *Hans Rees* decision, *infra*, and upon its contention that the manufacturing and selling aspects of its business are severable.

It is, of course, elementary that if income is to be apportioned by formula it must be income from a unitary business (*Underwood Typewriter Co. v. Chamberlain*, 254 U. S. 113); that the business of manufacturing and selling is ordinarily unitary (*Prentice Hall, State and Local Tax Service*, Paragraph 91428); and that even though a business is a unitary business allocation of its income to a State by formula may not be allowed if it is shown that in a particular case the formula results in a much greater portion of the corporation's income being allocated to the State than can be reasonably attributed to its operations therein (*Hans Rees' Sons v. North Carolina*, 283 U. S. 123).

The income of a manufacturing company results from its combined manufacturing, selling, buying, and managing activities. The income of an integral multi-state business is clearly allocable. Any general income which is not allocable would fall within the following three classes: (1) Income not derived from business; (2) Income from a business within one state; (3) Income from disassociated business in separate states. *Watson, Allocation of Business Income For State Income Tax Purposes*, 25 Minn. L. R. 851.

It is my opinion that items 1, 2, and 3 are essentially connected with taxpayer's unitary business. It cannot reasonably be said that the manufacturing and selling aspects of the business are entirely separable. On the contrary, they are fused together into an integral business. Items 1, 2, and 3 are not to be confined to New York State but arise in connection with plaintiff's business as a whole.

I, therefore, conclude that items 1, 2, and 3 constitute business income which should be included in income to be allocated.

Item 4, which is gain on sale of property, represents profit realized on the sale of factory machinery and office equipment. While a few of the states have adopted the view that gains from the sale of capital assets are allocable to the State where the property is located, North Carolina has consistently followed the alternative theory that if the capital assets are, as in this case, directly connected with the taxpayer's unitary business, any gain from the sale of such assets may be included in income to be allocated without reference to the situs of the assets where, as here, the statutory formula includes a fraction which takes into consideration the type of asset involved. *Prentice-Hall, State and Local Tax Service*, Vol. 1, paragraph 91,411. See *People ex rel. Alpha Portland Cement Company v. Knapp*, 230 N. Y. 48, 129 N. E. 202. Thus, in accordance with the well settled policy of this State, which in my opinion is legally sound, item 4 represents allocable income.

Item 5 raises the question whether the income from royalties is to be regarded as localized and attributable to the State of New York. As pointed out, these royalties license others to use processes which taxpayer itself uses in its manufacturing business. Taxpayer contends that this income is nontaxable by North Carolina on the principle that tax situs of income from intangibles is the domicile of the owner of the intangibles. Unquestionably it is the general rule that income from intangibles which represent investments not connected with business are not properly allocable since they are not directly connected with the unitary business. Watson, Allocation of Business Income For State Income Tax Purposes, 25 Minnesota Law Review, 858. However, it is equally well established that "income from securities or properties employed in connection with business must be considered part of business income and allocated therewith." *Idem*.

"The most important exception to the rule that intangible property is taxable at the domicile of the owner, is in the case of an indebtedness constituting a part of the assets used in a continuous business; it may then be taxed as property where the business is carried on, even though the owner of the business is a resident of another jurisdiction." 48 Harvard Law Review, 407, 420.

Furthermore, the business situs doctrine "is applied whenever the credits are deemed to be necessary assets in carrying on a continuing business, even though the credits themselves are only incidental to that business rather than its subject." *Idem*.

It is my opinion that if taxpayer licensed manufacturers within the State of North Carolina to use its patented processes and receive royalties for such licenses that income from all royalties received should be included in allocable income since taxpayer would be engaging in the business of licensing the use of its patents in this State. However, if (as I understand to be the case) taxpayer does not license any manufacturer in this State and receive royalties for such licenses, it is my opinion that the income from the licensing of such patents in the form of royalties is not income derived from taxpayer's unitary business of manufacturing and selling and, therefore, should be excluded from income to be allocated for taxation by this State. The business of licensing the use of its patent rights is not a part of the business of manufacturing and selling but is to be considered a separable business.

LIABILITY OF GREENSBORO MUNICIPAL COURT FOR PROCESS TAX
UNDER SECTION 157 OF THE REVENUE ACT

31 August, 1943.

You request my opinion upon the question whether the Civil Division of the Greensboro Municipal Court is liable for the payment of the process tax imposed by Section 157 of the Revenue Act of 1939, as amended, for the period commencing 1 January, 1940, and ending 31 December, 1942. You have assessed such tax against the Court in the amount of \$2,168.00, and your audit of the records of the Court reveals that such tax has been charged by the Court in its bills of

cost to parties litigant, and it is presumed that the taxes so charged were collected. However, they have not been remitted to the Commissioner of Revenue. The City Attorney protests this assessment on behalf of the court.

Section 157, Subsection (b), of the Revenue Act provides that at the time of issuing out a summons in a civil action in the Superior Court, or *other court of record*, the plaintiff shall pay a tax of \$2.00. Subsection (f) of the same section provides that the tax shall be levied and assessed by the Court and remitted to the Commissioner of Revenue.

The City Attorney contends (1) that the City of Greensboro was advised about the year 1931 by the Attorney General that the Court was not liable for the process tax; and (2) that the Court is not a court of record and, therefore, not liable for the tax under the statute.

With respect to the first contention, I have been furnished with a copy of a letter from the Commissioner of Revenue to the City Attorney of Greensboro, dated 3 September, 1931, in which the Commissioner advised that he was referring the question of the liability of the Court for the process tax to Mr. Siler, then an Assistant Attorney General. However, the files of this office do not reveal any ruling by Mr. Siler or any other member of the office upon this matter and the City of Greensboro has not furnished this office with a copy of any such ruling. If an oral ruling was made to the effect that the City was not liable for such tax, it is quite inconsistent with such a ruling that the City should proceed to charge the tax to plaintiffs bringing actions in the Court and this practice does not indicate that the Court understood that it had no liability in the matter. On the contrary, the reasonable inference to be drawn from the charging of the tax by the Court is that it was under the impression that it was liable for the tax. In view of these circumstances this office does not feel that any prior ruling that it may have made upon the matter has been clearly established and that in view of such doubt the question should now be considered upon its merits.

The second contention of the City Attorney—namely, that the Court is not a court of record, requires an analysis of the acts creating the Court.

The Greensboro Municipal Court was established by Chapter 651 of the Public Laws of 1909. Its jurisdiction was limited by that act to criminal cases. Section 2 of that Act is as follows:

"Sec. 2. Said court shall be a court of record and shall be presided over by a judge who shall be an elector of the City of Greensboro and a licensed attorney-at-law." (Italics added.)

In 1931 the General Assembly, by Chapter 126 of the Private Laws, amended the original act establishing the Court by adding thereto provisions which divided the Court into two divisions, a Criminal Division and a Civil Division, and conferred upon the Court through the Civil Division certain civil jurisdiction. This act did not amend

or modify Section 2 of the original act which declares that the Court is a court of record. However, by Section 56 of the 1931 Act, the following provision was made with respect to records:

"Sec. 56. *Records.* The board of county commissioners of Guilford County shall not be required to furnish for said court any dockets, nor shall the minute dockets of said court or any other record or information as to the proceedings therein be required to be filed in the office of the Clerk of the Superior Court of Guilford County. The clerk of said Municipal Court shall keep such minutes of the proceedings of the Civil Division as are now prescribed for justices of the peace, and such minutes shall be retained and filed in the office of said clerk. It shall be the duty of the clerk of said court to keep all other such records as may be proper, and it shall be the duty of the judge of the Civil Division of said court to see that such records are kept and, where the same are not sufficiently prescribed by law, to prescribe the nature and form thereof."

The City Attorney contends that since Section 56, quoted above, provides that the Clerk of the Court shall keep such minutes of its proceedings as are prescribed for justices of the peace and since it has been held that the Courts of justices of the peace are not courts of records (*Building Material Co. v. Pender*, 173 N. C. 55; *Reeves v. Davis*, 80 N. C. 209; *Williams v. Bowling*, 11 N. C. 296), the Greensboro Court, with respect to civil matters, is not a court of record. In support of this contention, it is pointed out that Section 54 of the 1931 Act provides that except as otherwise prescribed all laws relative to civil actions, matters and proceedings in courts of justices of the peace, including all laws relative to process, rules of practice, procedure, orders, writs, decrees, judgments and appeals shall be applicable to the Civil Division of the Court.

What is a court of record? "Broadly speaking, a court of record is one keeping a written account of its proceedings which imports verity, or which is so denominated by the statute of its creation." 21 C. J. S. page 20.

"Courts may be designated by statute as courts of record, . . . and it has been said that a test entitled to considerable weight in determining whether or not a court is one of record is whether the legislature creating the court has or has not declared it to be a court of record." (Citing *State v. Allen*, 117 Ohio St. 470, 159 N. E. 591), 21 C. J. S. page 20.

The original act creating the Greensboro Municipal Court specifically declared it to be a court of record and this declaration is still entitled to great weight unless the amendatory act of 1931 removed the effect of such declaration. The 1931 act did not amend Section 2 of the original act which declared the court to be a court of record and that provision has remained intact. The question arises whether by implication the 1931 act repeals the earlier declaration that the court is a court of record. I have given careful consideration to this question and it is my opinion that the Greensboro Municipal Court was, during the period of the tax assessment, a court of record.

The Acts creating the court still contain a declaration that it is a court of record and it is a well established principle of statutory con-

struction that repeals by implication are not favored in law. *State v. Perkins*, 141 N. C. 797; *Kearney v. Vann*, 154 N. C. 311; *Hammond v. City of Charlotte*, 205 N. C. 469. In my opinion a repeal of Section 2 of the original act is not to be necessarily inferred from Section 56 of the 1931 Act for the reasons that said section does not clearly state that the *only* records which the court *shall* keep are those as are prescribed for justices of the peace but provides that it shall be the duty of the Clerk "to keep all other such records as may be proper." I, therefore, conclude that the 1931 Act does not disclose a clear intent to render the court not a court of record.

Supporting this conclusion are the facts that the court itself has, since the 1931 amendment, construed the process tax as being due and has charged and presumably collected the same, and that Chapter 351 of the Session Laws of 1943 which purports to exempt the Civil Division of the court from process tax in the future and to provide that the city and its officers shall not be liable for uncollected process fees on suits theretofore instituted reasonably infers a legislative recognition of liability for process tax that has been collected on suits instituted before the passage of the act.

In my opinion the Commisisoner of Revenue is entitled to process tax where such tax has been charged and collected by the Court prior to the effective date of the 1943 Act.

Note: This opinion later modified. See letter dated 23 March, 1944.

REVENUE ACT, SECTION 122(b); LIABILITY FOR CONTRACTOR
FOR PROJECT TAX

14 September, 1943.

You have referred to me a letter of September 9, 1943, from Mr. George W. Kane, regarding his liability for project tax in the performance of his contract for the Defense Housing Project at Fort Bragg. Mr. Kane enclosed a letter from the Federal Works Agency, Public Buildings Administration, requesting certain information regarding this tax in order to determine whether it is properly entitled to reimbursement by the Federal Government. The specific questions are as follows:

(1) Would it have been necessary for Mr. Kane, as a contractor established in North Carolina, to pay the license tax if he had not been awarded the contract? The tax referred to is that levied by Section 122(b) of the Revenue Act. This tax is in addition to the \$100.00 license tax exacted from contractors for the privilege of bidding and is related to the specific project which the contractor undertakes to perform work upon and is graduated according to the total contract price of such project. This statute provides that where such total contract price is over one million dollars the tax shall be \$625.00, and that is the amount of tax collected from Mr. Kane for the performance of the contract in question. It is, therefore, clear that this tax would not have been due the State of North Carolina if Mr. Kane had not entered into the contract in question and worked upon the project in question.

(2) Is the Federal Government entitled to receive a refund of a portion of such tax for the period from October 11, 1941, the

date the project was completed, to May 31, 1942, the date the license expired? No such refund is allowable. The tax is due at the time of entering into the project or contract and is for the privilege of so doing. Therefore, the tax became fully due at the time the project was entered into and since the tax is not set up upon an annual basis no refund is due for the period following the completion of the project.

SALES TAXES; FLORENCE-MAYO NUWAY COMPANY

17 September, 1943.

You have made an assessment upon the Florence-Mayo Nuway Company, hereinafter referred to as the taxpayer, for a deficiency of sales taxes. The taxpayer has protested the assessment and you have requested my opinion upon the correctness of the assessment.

Taxpayer is engaged in the business of manufacturing and selling tobacco curers. Some of these curers are sold to customers at the office of the taxpayer and the taxpayer recognizes its liability for the retail sales tax of 3 per cent upon all such sales. The contested portion of the audit upon which the assessment is based is that representing the proceeds of sales made by "distributors" of the taxpayer. The basic question to be determined is whether such "distributors" are agents of the taxpayer or are independent salesmen who purchase from taxpayer and sell on their own behalf. If the "distributors" are merely agents of the taxpayer, sales made through such "distributors" are retail sales made by taxpayer and taxpayer would, therefore, be liable for the retail tax of 3 per cent upon such sales. On the other hand, if such "distributors" are independent merchants, taxpayer's sales to them would be wholesale sales and thus exempt from the retail tax.

A determination of the legal status of these "distributors" requires an examination of the contract existing between them and the taxpayer.

I have examined a copy of the "Distributor's Contract" and find that its essential provisions are as follows:

After reciting that the distributor "desires to buy and resell such curers" manufactured by the taxpayer, the contract provides that the taxpayer agrees to sell curers to the distributor with authority to the distributor to resell the curers within a prescribed territory; that the agreement does not delegate to the distributor the right or authority to transact any business or incur any obligations for or in the name of taxpayer; that taxpayer reserves no right of control or direction over the distributor except as to the territory in which he may sell and that it is agreed that the distributor shall be an independent contractor; that the distributor agrees to use his best efforts to sell the curers and to sell them at not less than list price or a prescribed schedule, not to sell any other line of curers, to install and service the curers for a twelve months period without expense to the purchasers, except for materials.

Paragraph II of the Contract contains the following provisions:

"(d) Title to all curers shipped to Distributor shall remain vested in the Company until all of the payments and agreements of the buyer or user are complied with in full."

"(e) Upon delivery of curer to Distributor by the Company, to pay to the Company the full price in the case of a cash sale, and in case of time sales to pay to the Company the first installment of cash as provided in schedule attached, accompanied by a Retained Title Note duly recorded properly endorsed to the Company, and thereupon the Company will credit the Distributor's account with the cash and the face value of the Retained Title Note or notes subject to refund to Distributor of the amount as set forth in schedule, upon payment of note in full, with the understanding and agreement that the Distributor will make collections from the purchaser and remit the same promptly to the Company, said collections to be made at expense of Distributor and without any cost to the Company; and if the Distributor shall fail to make the collections promptly, then and in such event the Company shall have the right to make the collections and charge the expense thereof, including legal expenses, to the account of the Distributor."

Paragraph III of the Contract provides "that all sales tax shall be added to the price list or schedule and collected from the purchaser-user by the distributor and that the Company shall be in no manner liable for any sales tax."

Although the contract contains wording indicating that the distributor is an independent contractor buying and selling on his own behalf, paragraphs (d) and (e) raise some doubt as to whether the distributor is an independent contractor. The provisions in said paragraphs that title to curers remains vested in taxpayer until the purchaser complies with payment and agreements, and that the distributor will make collections and remit them to taxpayer, suggests a relationship of agency. However, the contract must be construed from its "four corners" and it is necessary to determine whether paragraphs (d) and (e) are controlling in establishing an agency relationship.

"An agency may be defined as a contract either express or implied upon a consideration, or a gratuitous undertaking, by which one of the parties confides to the other the management of some business to be transacted in his name or on his account, and by which that other assumes to do the business and render an account of it." 2 Am. Jur. page 13.

"An independent contractor may be distinguished from an agent in that he is a person who contracts with another to do something for him, but who is not controlled or subject to the control of the other in the performance of such contract, but only as to the result . . . the theory which in many cases is adopted to differentiate between an agent and an independent contractor is that one is to be regarded as an agent or an independent contractor according to whether he is subject to, or free from, the control of the employer with respect to the details of the work." 2 Am. Jur. page 17.

With respect to sales contracts the question "whether the relation is one of agency or of buyer and seller depends on the intention of the parties." 2 C. J. S. p. 1031.

The contract together with the supplementary "confidential dealer's price list" indicates that the intent of the parties is that the distributor purchases the curers at a quoted "dealer's price" and sells them at a "suggestive selling price." The difference between the dealer's price and the selling price represents the distributor's profit.

The price list referred to above states the following terms as to payment between the distributor and the taxpayer: "payment in ten days from date, 2 per cent discount, net thirty days, after thirty days positively no discount allowed. All prices f.o.b., Maury, North Carolina."

The contract does not prescribe or reserve to the taxpayer the right to prescribe the manner in which the distributors shall sell the curers, or the amount of time which they shall give to this activity; and the statement in the contract that it is agreed that the distributor shall be an independent contractor (while not controlling) is entitled to weight.

It is my opinion that the principles of law referred to above when applied to the contract in question lead to the conclusion that essentially the distributor is an independent purchaser and not an agent of the taxpayer.

It has been held that in a contract between a company and an individual, relating to the sale of the company's products, the fact that it was agreed between the parties that the products were to be sold at certain prices and in a certain manner, did not constitute the contract one of agency where other provisions of the contract indicated that the transaction was one of bargain and sale. *W. T. Rawleigh Med. Co. v. Holcomb* (Ark., 1917) 191 S. W. 215. Further, the furnishing of goods to another for him to sell in a certain territory does not alone create an agency.

Husleton v. Eddie Bald Motor Car Co., 81 Pa. Superior Court 526. And, it has been held that "the retention of title as security is not inconsistent with a contract of sale." *Howard v. Hancock Oil Co.*, 68 Fed. (2d) 694.

I do not think that the provision that the distributor shall make collections for the taxpayer of deferred payments of purchase price constitutes the relationship one of agency. Other provisions of the contract indicate that the taxpayer sells the curers to the distributor. While paragraph (e) of the agreement is not entirely clear, it seems to provide that the distributor's liability to pay for the curers arises upon delivery to him by the taxpayer. This is consistent with the theory of sale.

I, therefore, advise that you should cancel the assessment in question for the reason that the distributor's were not the agents of taxpayer.

By way of caution I should like to emphasize that the question of when an agency exist is often a most difficult one and this opinion is based upon and limited to the exact facts and contract under consideration. It would be advisable for you in the future to submit like contracts to this office in view of the fact that they may contain differences which would require another conclusion.

SALES TAX; LIABILITY; CANTEEN OF CAROLINA; CHARLOTTE, N. C.

20 September, 1943.

You have referred to me a letter from Mr. S. R. Pruden with reference to the "Canteen of Carolina," Charlotte, N. C. Mr. Pruden's letter does not state in detail the facts involved in this matter but I under-

stand that this business owns certain machines which are located at Army posts and barracks; that the machines are supervised by the owner of the business who refills the machines and takes the receipts from them.

The taxpayer contends that he is not liable for sales tax on sales made from such machines on Army posts and you request my opinion on the correctness of that contention.

If I understand the facts correctly, the machines are not operated in any way by the War Department but are entirely under the supervision and operation of the taxpayer. If this is true, it is my opinion that sales made from such machines are subject to the three per cent sales tax. The fact that the machines are located on a Federal Reservation does not alter this conclusion in view of the fact that by the Buck Act Congress expressly permitted the states to collect sales taxes upon Federal Reservations from other than governmental instrumentalities.

INHERITANCE TAXATION; DEVISE AND BEQUEST NOT LIMITED TO
PURPORTED LIFE ESTATE; ESTATE OF H. A. ROUZER

6 October, 1943.

You have requested my opinion upon the following matter.

Mr. H. A. Rouzer, a resident of Rowan County, died testate on 13 October 1942. By Item Two of his will, Mr. Rouzer devised and bequeathed to his wife, "for and during the term of her natural life (vested with all of the rights, powers and authorities hereinafter mentioned) all of his property of every kind, to do the following things and carry out the instructions and directions hereinafter mentioned and as follows":

(a) His wife "shall have possession, supervision, custody and control" of the property "(with right of sale and conversion into money) so long as she shall live"; full right to collect all rents and profits, and use the same to pay expenses and debts, or to provide moneys for herself or her children;

(b) His wife shall have full power to turn over to the children any property given her for life;

(c) If necessary for her comfort, or to discharge any indebtedness against any real estate, the wife, either as executrix or individually, shall be empowered to sell upon her own decision and without order of court any of the real estate in fee simple, or to mortgage the property, without the joinder of the children as grantors or mortgagors;

(d) His wife may dispose of both real and personal property without order of court at either public or private sale, and the purchaser or purchasers at said sales shall obtain valid titles thereby.

By Item Four of the will, Mr. Rouzer devised and bequeathed to his five children all his property, subject to the provisions of certain other items of the will, including Item Two.

You inquire whether, in computing inheritance tax in connection with Mr. Rouzer's estate, the share of his wife should be computed at the value of all the property as if she had been devised or be-

queathed all the property absolutely, or whether her share should be valued as a life estate only in the property.

It is elementary that in construing a will the quest is for the intent of the testator or testatrix as gathered from "the four corners" of the will, and attendant circumstances. *Patterson v. McCormick*, 181 N. C. 311.

The law applicable to situations of this kind is stated in *Carroll v. Herring*, 180 N. C. 369, as follows:

"Where real estate is given absolutely to one person, with a gift over to another of such portion as may remain undisposed of by the first taker at his death, the gift over is void, as repugnant to the absolute property first given; and it is also established law that where an estate is given to a person generally or indefinitely with a power of disposition, or to him, his heirs and assigns forever, it carries a fee, and any limitation over or qualifying expression of less import is void for repugnancy. The only exception to such a rule is where the testator gives to the first taker an estate for life only, by certain and express terms, and annexes to it the power of disposition. In that particular and special case the devisee for life will not take an estate in fee, notwithstanding the naked gift of a power of disposition. *Schouler on Wills, Executors and Administrators*, pp. 703, 594, in which is cited *Mulvane v. Rudd*, 146 Ind., 482 and 483 (45 N. E., 659), and others."

See also *Roane v. Robinson*, 189 N. C. 628; *Heefner v. Thornton*, 216 N. C. 702.

In *Alexander v. Alexander*, 210 N. C. 281, a wife was given the balance of an estate for her widowhood with power to sell "and not to limit herself in any amount she may wish to spend." Her two sons were given that which might remain at her death. Notwithstanding her unlimited power and right to sell, the Court held that what ever should remain at her death would go to her remaindermen, saying:

"While the gift of an estate to a person generally or indefinitely with power of disposition ordinarily carries a fee, this rule will not be allowed to prevail when the testator gives to the first taker by express terms an estate for life only, though coupled with power of disposition. *Hambright v. Carroll*, 204 N. C. 496; *Rose v. Robinson*, 189 N. C. 628; *Tillett v. Nixon*, 180 N. C. 195; *Carroll v. Herring*, 180 N. C. 379; *Fellows v. Durfey*, 163 N. C. 305; *Chewning v. Mason*, 158 N. C. 578; *Herring v. Williams*, 158 N. C. 1."

See also *Cagle v. Hampton*, 196 N. C. 470; *Burwell v. Bank*, 186 N. C. 117; and *Helms v. Collins*, 200 N. C. 89.

Applying these principles to the will under consideration, I conclude that Mrs. Rouzer received under the will only a life estate, even though said estate was coupled with a power of sale and use and that the children would receive at the death of their mother what is left of the estate.

However, this conclusion does not require that inheritance tax be computed as though Mrs. Rouzer had only a life estate in view

of Section 17 of the Revenue Act, which contains the following provision:

"When property is transferred or limited in trust or otherwise, and the rights, interest, or estate of the transferees or beneficiaries are dependent upon contingencies or conditions whereby they may be wholly or in part created, defeated, extended, or abridged, a tax shall be imposed upon said transfer at the highest rate, within the discretion of the Revenue Commissioner, which on the happening of any of the said contingencies or conditions would be possible under the provisions of this Act, and such tax so imposed shall be due and payable forthwith out of the property transferred, and the Commissioner of Revenue shall assess the tax on such property."

It is possible for Mrs. Rouzer to completely dispose of the property so that nothing would pass to the children at her death. On the other hand, it is possible that the greater portion of the estate will pass to the children. Section 17 contemplates that the tax is not to be defeated or delayed by this uncertainty but that it should be assessed on the basis of the contingency most favorable to the State.

It is, therefore, my opinion that for purposes of assessing inheritance tax you may, under the provisions of Section 17, assume that Mrs. Rouzer will exercise her power of disposition and compute the tax accordingly.

INHERITANCE TAXATION; PROPER DISTRIBUTION FOR TAX PURPOSES WHERE
PROPERTY IS DEVEISED AND BEQUEATHED IN TRUST FOR BENEFIT OF
WIDOW AND CHILDREN OF TESTATOR, WITH POWER OF AP-
POINTMENT VESTED IN WIDOW WHEN CHILDREN REACH
MAJORITY; ESTATE OF CHARLES ALEXANDER WHALING

7 October, 1943.

You desire my opinion upon the following matter.

Charles Alexander Whaling, a resident of Forsyth County, died testate leaving a wife and children surviving him. After certain specific bequests and devises, the testator, by the third item of his will, bequeathed and devised the residue and remainder of his property to a trustee, with power in the trustee to sell or convert the corpus and invest and reinvest the proceeds, to collect the income of the corpus and pay the same to his wife for the maintenance and support of herself and their children, and to make expenditures for such purposes from the corpus if necessary. Paragraph (c) of Item Three of the will is as follows:

"(c) If my wife shall be living when my youngest child shall have attained the age of twenty-one years, then my Trustee is authorized to pay over to her the residue and remainder of this trust fund, discharged of this trust fund, or to distribute the same as she shall direct in writing. Nevertheless, if my said wife so elect, she may direct in writing, and the Trustee shall continue to administer the said trust fund, or the remainder thereof, and shall distribute at such times, and to such beneficiaries and in such manner and amounts as my said wife shall authorize in writing. To this end I give to my said wife, full power and authority to dispose of the said residue of the said trust fund by her last will and testament."

The Commissioner of Revenue regarded the quoted paragraph as giving the wife an absolute power of appointment over the property after the children reach their majority, and computed inheritance tax by taxing the estate entirely to the wife after the children reach their majority. The Trustee has challenged this basis and you request my opinion upon its soundness.

The Trustee contends that a will must be construed as a whole, and not with reference to any particular provision thereof alone, and that if this is done, it will be seen that the testator intended to leave his property to his wife and children, and that while the wife was "wisely" given control of the property, this is not a decisive factor. The Trustee argues that while theoretically Item Three gives the wife an absolute power of appointment, as a practical matter she will, barring a remote contingency, exercise it in favor of the children, and thus carry out what is (as the Trustee contends) the evident intent of the will to provide for both the wife and the children.

The Trustee has correctly stated the applicable rule of law to be applied in construing wills. *Haywood v. Rigsbee*, 207 N. C. 684.

However, I am unable to agree with the Trustee's conclusion after applying this principle. As I read the will, the manifest intent of the testator was to provide for the maintenance of his wife and also to provide in all events for the maintenance of his children until their majority, when they would probably be in a position to look after themselves. Paragraph (d) of Item Three makes provision for distribution of the trust fund to the children if the wife predeceases them without having exercised the power of appointment. But apparently, the testator intended for his wife to have a free and absolute power of appointment over the property if she should elect to exercise it. The language is clear: "To this end I give to my said wife, full power and authority to dispose of the said residue of the said trust fund by her last will and testament." The "end" toward which this power is granted is the distribution, by the trustee, of the trust fund "as she [the wife] shall direct in writing." The effect of this explicit language is not to be destroyed by indulging in asserted probabilities. The power granted is unqualified, and it is not open to the Commissioner to attempt to divine what exercise will be made of it, and limit the tax base on such a speculative ground.

In view of the vesting in the wife of his unqualified and absolute power of appointment, it is my opinion that the distribution made by the Commissioner for inheritance tax purposes is justified under Section 1 (Sixth) of the Revenue Act.

ESTATE OF T. D. TYACK. INHERITANCE TAXATION; DEDUCTION OF
INDEBTEDNESS OF DECEDENT SECURED BY
INSURANCE PROCEEDS

8 October, 1943.

You have referred to me your file in the above named estate with the request that I give you my opinion upon the following question.

At the time of his death, the decedent was indebted to the Piedmont Federal Savings & Loan Association in the sum of \$16,547.90. This

indebtedness was secured by a mortgage upon real estate and also by the assignment to the association of certain insurance policies upon the life of the decedent, and payable to his wife, in the face amount of \$11,857.66.

In computing the inheritance tax, the administrator reported the insurance proceeds in the amount of \$11,857.66, and set off against this sum the \$20,000.00 insurance exemption. The administrator also entered as a deduction the indebtedness of \$16,547.90, although the insurance proceeds were applicable to the extinguishment of this indebtedness. You have taken the position that since the insurance proceeds were applied to discharge the indebtedness, the deduction that can be lawfully allowed is only the difference between the insurance proceeds were applicable to the extinguishment of this indebtedness—\$16,547.90. This difference is \$4,690.24. On the other hand, the administrator contends that tax was correctly computed "because to the extent that the insurance discharged the debt, the beneficiary was subrogated," and that "therefore, the debt continued to be a debt of the estate." In support of this position, the administrator cites *Russell v. Owen*, 203 N. C. 262. You inquire which of these contentions is correct.

In the *Russell* case, a husband had borrowed money, and he and his wife had executed a note evidencing the indebtedness and a mortgage to secure it. The husband procured policies of insurance upon his life, with his wife as beneficiary, and the husband and wife assigned these policies to the creditor as additional security for the loan. The court held that upon the husband's death, the wife was entitled to the proceeds of the policies subject only to the claim of the assignee, and that where the amount of the loan has been paid from the insurance proceeds, the wife has a claim against the estate for the amount thereof, since she is subrogated to the rights of the creditor for its payment.

This decision is in point with the situation under consideration, and it is my opinion that it supports the position of the administrator and requires the allowance of the entire amount of the debt as a deduction even though it was paid with the insurance proceeds. The return might show the indebtedness to the wife, but this is purely a clerical matter which does not affect the substance of the transaction.

REVENUE ACT, SECTION 157; PROCESS TAX; APPLICATION TO
CRIMINAL PROCEEDINGS

12 October, 1943.

You have requested my opinion upon the application of Section 157 of the Revenue Act to criminal proceedings.

Subsection (a) of this section is as follows:

"(a) In every indictment or criminal proceeding finally disposed of in the Superior Court, the party convicted or adjudged to pay the cost shall pay a tax of two dollars (\$2.00): Provided, that this tax shall not be levied in cases where the county is required to pay the cost."

There is no other levy in this statute of a tax on criminal proceedings. It is, therefore, my opinion that no process tax is applicable to any criminal proceeding except those finally disposed of in the Superior Court, as provided in Subsection (a). Criminal proceedings instituted and disposed of in any courts inferior to the Superior Court are not subject to the tax.

FRANCHISE TAX; INCLUSION BY FOREIGN CORPORATION DOING BUSINESS
IN NORTH CAROLINA OF TANGIBLE PROPERTY AND SALES OF ITS
FOREIGN SUBSIDIARY IN DETERMINING
APPORTIONMENT FRACTION

13 October, 1943.

You request my opinion upon the following matter:

The F. W. Woolworth Company (hereinafter referred to as the taxpayer) is a foreign corporation qualified to do business in North Carolina. This business is the purchase and sale of merchandise. Taxpayer owns a controlling stock in a subsidiary corporation incorporated under the laws of the Dominion of Canada.

In computing its franchise tax liability for the year 1943, taxpayer agrees that the value of its stock held in the Canadian subsidiary should be included in the tax base of capital stock, surplus and undivided profits. However, taxpayer further contends that the denominator of the apportionment fraction should include the tangible properties and sales of the Canadian subsidiary. Accordingly, taxpayer determined the allocation fraction to be 1.46559 per cent. The Department of Revenue has, on the other hand, taken the position that while the value of the stock held in the Canadian subsidiary was properly included in the tax base, the tangible property and sales of the Canadian subsidiary should be excluded from the denominator and that, thus, the denominator should include only the tangible property and sales of taxpayer (a New York corporation). The Department thus determined the proper fraction to be 1.5916 per cent and assessed additional tax against taxpayer in the amount of \$389.64. Taxpayer has protested this assessment and you request my opinion upon its validity.

Section 210(3)(B) of the Revenue Act of 1939, as amended, which prescribes the method of determining the apportionment fraction with respect to foreign corporations engaged in the business of selling, distributing, or dealing in tangible personal property in this State, indicates clearly that only the tangible property and sales of the company engaged in business in this State are to be included in the allocation fraction. The Canadian subsidiary is a separate entity and its property and sales are not the property and sales of the New York corporation.

In spite of the wording of the statute, taxpayer contends that for constitutional reasons the property and sales of the Canadian subsidiary must be included, and cites in support of its position the decision in *People Ex Rel. Alpha Portland Cement Co. v. Knapp*, 230 N. Y. 48. However, I have studied this decision and do not think

that it justifies your departing from the provisions of the statute which, as a State official, you should presume is constitutional and valid in the absence of clear authority to the contrary.

SALES AND USE TAXES; APPLICATION TO PURCHASES UNDER LUMP-SUM
CONTRACT BETWEEN N. C. SHIPBUILDING COMPANY
AND U. S. MARITIME COMMISSION

13 October, 1943.

You have referred to me the letter of October 8, 1943, from the North Carolina Shipbuilding Company, inquiring whether purchases made by said company (hereinafter referred to as "taxpayer") under certain contracts entered into with the United States Maritime Commission for the construction of Design C2-S-AJ1 Cargo Vessels are subject to North Carolina sales and use taxes. Taxpayer has submitted a copy of one of the contracts which is representative of all the contracts involved.

The contract specifically provides that the taxpayer is not the agent of the United States Maritime Commission but is an independent contractor (Article 2, paragraph (a)). The contract calls for the construction by the taxpayer of certain completed cargo vessels and the payment to the taxpayer of a fixed fee as compensation. Although Article 12, paragraph (a), provides that title to the vessels and to all materials, equipment, supplies and all other property assembled at the site of the work or elsewhere, for the purpose of being used in the construction of the vessels or for performance of work under the contract, shall vest in the Maritime Commission to the extent that the Commission or the contractor makes payment therefor, it is clear that taxpayer has no authority in making purchases to pledge the credit of the Maritime Commission or of the Federal Government.

The contract, in Article 2, paragraph (a), provides that the taxpayer shall furnish all labor, materials, supplies and equipment, except those furnished by the Commission, and taxpayer states that it is not contemplated that the Commission will furnish any of the materials in these particular contracts.

This office has previously ruled that sales to and purchases by a lump-sum contractor engaged in the construction of completed vessels for the Federal Government are properly classified as sales to and purchases by a manufacturer. Opinion to R. E. Whitehurst, dated 23 October, 1942. Since, therefore, taxpayer's status under the contract is that of a manufacturer, sales to and purchases by taxpayer are governed by the following principles:

(1) Sales to and purchases by taxpayer of tangible personal property which becomes an ingredient or component part of the vessels are not subject to the retail tax of 3 per cent but are subject to the wholesale tax of $1/20$ of 1 per cent if purchased from a vendor within this State and if the vendor should choose to pass on the wholesale tax to taxpayer. See Revenue Act, Section 404(5). Such purchases from out-of-State vendors are not subject to any tax. See Revenue Act, Section 803(b).

(2) Sales to and purchases by taxpayer of tangible personal property which may be classed as sales and purchases of "mill machinery or mill machinery parts and accessories to manufacturing industries and plants" are exempt from the retail tax but are subject to the wholesale tax of 1/20 of 1 per cent. See Revenue Act, Section 406(m) and amendment to sales tax regulations becoming effective July 1, 1937, relating to proper interpretation of mill machinery and accessories.

(3) Sales to and purchases by taxpayer of tangible personal property which does not become an ingredient or component part of the vessels or which cannot be properly classified as mill machinery or mill machinery parts and accessories to manufacturing industries and plants are subject to the retail tax of 3 per cent. Such sales and purchases are taxable because taxpayer is not an agent of the Federal Government but an independent purchaser and, hence, sales and use taxes may be validly applied under the decisions in *Alabama v. King & Boozer*, 314 U. S. 1, and *Curry v. United States*, 314 U. S. 14.

(4) The sale of the vessels from taxpayer to the Federal Government is not taxable. See Revenue Act, Section 406, and sales tax regulations, Section 7(d).

INHERITANCE TAX; RESERVATION OF LIFE ESTATE BY DECEDENT BY
CONVEYANCE MADE MORE THAN THREE YEARS PRIOR TO
DEATH; ESTATE OF J. F. BUCKMAN

25 October, 1943.

You have referred to me a letter from Mr. W. B. Rodman, Jr., dated 5 July, 1943, concerning the inheritance tax liability of the Estate of J. F. Buckman, with the request that I advise you upon the questions raised therein. The facts, and the questions of law presented, are as follows:

In 1925 J. F. Buckman and his wife made certain conveyances by deeds to their children. In three of these deeds a life estate was reserved to the grantors in the following language: "The parties of the first part reserve unto themselves, however, an estate for the term of their natural lives and for the life of either of them." In a fourth conveyance, the property was conveyed to trustees for the benefit of a daughter, and a life estate was reserved in the following language: "The parties of the first part reserve unto themselves, however, an estate for the natural life of both or either of them." The remainders created by the first three conveyances were vested, and were not subject to divestment by any contingency. The remainder created by the fourth conveyance was subject to divestment, but not in favor of the grantors or either of them.

Three of these conveyances were made prior to March 10, 1925. The fourth conveyance was made on March 17, 1925.

Mrs. Buckman predeceased her husband, and Mr. Buckman died on November 25, 1942. The Commissioner of Revenue contends that these gifts made in 1925 are subject to the inheritance tax; Mr. Rodman, as counsel for the Estate, contends that no inheritance tax can validly be imposed on account of these gifts.

The essential question to be determined is whether a conveyance in 1925 with a reservation of a life estate in the grantor with vested

remainders over may be the basis for an inheritance tax at the death of the grantor in 1942.

In determining this question it is necessary to inquire: (1) whether at the time the conveyances were made, and continuously thereafter, the inheritance tax law classed such transfers as taxable; and (2) whether, although the inheritance tax laws in effect at the time the conveyances were made did not render them taxable, they were subsequently rendered taxable by amendments to the inheritance tax law which may be validly applied.

Three of the conveyances in question were made while the Revenue Act of 1923 was effective and the fourth was made after the effective date of the Revenue Act of 1925. The applicable provisions of the two Revenue Acts are similar and are as follows:

"From and after the passage of this act all real and personal property of whatever kind and nature, including stocks and bonds of foreign and domestic corporations held or deposited either within or without the State, which shall pass by will or by the intestate laws of this State from any person who may die seized or possessed of the same while a resident of this State, whether the person or persons dying seized thereof be domiciled within or out of the State (or if the decedent was not a resident of this State at the time of his death, such property or any part thereof within this State), or *any interest therein or income therefrom which shall be transferred by deed, grant, sale, or gift, made within three years of the death of the grantor, bargainor, donor, or assignor: Provided, said property conveyed, granted, sold, given or transferred shall, at the time of such deed, grant, or gift, exceed three per cent of the value of the estate of such grantor, bargainor, donor, or assignor, and intended to take effect in possession or enjoyment after such death.*" (Italics added.)

It is clear that under this provision of the Revenue Acts of 1923 and 1925 the conveyances in question were not rendered taxable because the transfers were not made within three years of the grantor's death.

In 1927 by Chapter 80, Section 1, of the Public Laws, the General Assembly amended the inheritance tax schedule of the Revenue Act to tax a transfer of property made by deed in contemplation of the death of the grantor or intended to take effect in enjoyment or possession at or after such death with no limitation as to the time of the transfer. In 1933 the scope of the statute was further enlarged by amendment with regard to transfers to take effect in enjoyment or possession at or after death by including "a transfer under which the transfer or has retained for his life or any period not ending before his death (a) the possession or enjoyment of or the income from the properties. . . ." The quoted provision has been carried forward in all Revenue Acts subsequent to that of 1933 and was contained in the Revenue Act of 1939 which was in effect at the time of Mr. Buckman's death. It is, therefore, necessary to determine whether the quoted provision renders taxable the transfers made by Mr. Buckman.

It is thus clear that the Revenue Act of 1939 defines a transfer of the type under consideration as a taxable transfer. It is necessary to

inquire whether, since the statute expressly defining the transfer as taxable was not in effect at the time the conveyances were made, the tax may now be applied. It is contended on behalf of the Estate of J. F. Buckman that the statute cannot be so applied on the ground that it would then be given a retroactive and hence invalid effect.

Perhaps the strongest support for the position that the tax may not be validly levied is found in the decision of *Coolidge v. Long*, 282 U. S. 582. In this case the United States Supreme Court held that an irrevocable gift with a reservation of a life interest could not be constitutionally taxed under a tax statute passed after the gift was made but before the donors' death. Justices Roberts, Holmes, Brandeis and Stone dissented from this decision. The majority of the Court took the view that the trust deeds created vested remainders (subject to divestment if the remaindermen died before the survivor of the donors) and that the possibility of divestment did not make the succession incomplete as long as the grantor lived. Under this view there was no testamentary transfer after the passage of the taxing act. The dissenting opinion expressed the view that the tax could be validly applied because under the decisions of the State of Massachusetts the tax was levied on the privilege of entering into possession or enjoyment and that the tax may be levied whenever that privilege arises after the enactment of the tax statute even though the right to such possession and enjoyment was vested prior to the enactment of the tax statute. *Coolidge v. Long* has not been expressly overruled by the United States Supreme Court. However, there are several indications that the views of the dissentors in this case would be accepted by the majority of the present Court. Professor Rottschaefer, an outstanding teacher in the field of taxation, has stated:

"The only doubt concerns the present status of the decision in *Coolidge v. Long* as applied to a case in which the grantor has reserved a life estate for his own life which he continues to enjoy until his death. It is quite probable that the views of the minority will prevail if this issue is again squarely before the Court." 26 Iowa Law Review 514.

The Supreme Court of Minnesota has expressly declined to follow *Coolidge v. Long* (*Rising's Estate v. State*, 186 Minn. 56, 242 N. W. 459 (1932)), and the Attorney General of Texas has advised the taxing authorities of that State that *Coolidge v. Long* should not be followed. Opinion of Attorney General of Texas to Comptroller of Public Accounts, May 5, 1943, found in Paragraph 15,475 of the CCH Inheritance Estate and Gift Tax Service.

The view that *Coolidge v. Long* should not be followed does not imply an approval of retroactive taxation which is declared against in Article I, Section 32, of the North Carolina Constitution and under some circumstances by the due process and contract clauses of the Federal Constitution. (The Court has held since the *Coolidge* case that "a tax is not necessarily and certainly arbitrary, and therefore invalid, because retroactively applied." *Milliken v. United States*, 283 U. S. 15; *Welch v. Henry*, 305 U. S. 134.) This view is based

simply upon a construction of the state inheritance tax laws that the remaindermen do not actually come into full possession and enjoyment of the property until the death of the grantor; that the death of the grantor is the operative event resulting in the coming into possession and enjoyment and the perfection of title in the remaindermen; that this is a succession "of such real and substantial sort, with such vital and enlarging effect on property rights as to make it the proper subject of an excise."

In determining whether or not the privilege of succession has been fully exercised "technical distinctions between vested remainders and other interests are of little avail, for the shifting of the economic benefits and burdens of property, which is the subject of a succession tax, may even in the case of a vested remainder be restricted or suspended by other legal devices. . . ." *Saltonstall v. Saltonstall*, *supra*. This approach has been followed in other decisions of the United States Supreme Court which has in several cases "rejected formal distinctions pertaining to the law of real property as irrelevant criteria in this field of taxation." *Helvering v. Hallock*, 309 U. S. 106; *Klein v. United States*, 283 U. S. 231. In the *Klein* case, 283 U. S. at 234, the Court said:

"Nothing is to be gained by multiplying words in respect to the various niceties of the art of conveyancing or the law of contingent and vested remainders. It is perfectly plain that the death of the grantor was the indispensable and intended event which brought the larger estate into being for the grantee and executed its transmission from the dead to the living, thus satisfying the terms of the taxing act and justifying the tax imposed."

It will be noted that Section 1 (Third) of the Revenue Act of 1939 taxes a transfer "intended to take effect in possession or enjoyment" after the transferor's death. "That the 'possession' and 'enjoyment' which are determinative of this question refer to the economic benefits of the property rather than to the theoretical vesting of title is revealed by the host of cases, see 49 A.L.R. 874, 878, 67 A.L.R. 1250, 100 A.L.R. 1246, 1247, in which a grantor has reserved a life estate in property transferred by way of remainder to a grantee. In these cases the grantee acquires immediate and indefeasibly vested remainder under theoretical common law rules, and, were the date of vesting the crucial date, his tax liability should be determined at that time. Yet the cases are virtually unanimous in holding that the date when the grantee succeeds to the actual possession and enjoyment, rather than the date when he acquires a vested title, is crucial." Opinion of Attorney General of Texas, *supra*.

So construed, there is ample authority that the statute may validly subject the transfer to taxation. The principle that "so long as the privilege of succession has not been fully exercised it may be reached by the tax" has been recognized by the United States Supreme Court. *Saltonstall v. Saltonstall*, 276 U. S. 260. This principle also finds support in the decisions of the U. S. Supreme Court holding that a statute taxing the receipt of property is not retroactive because the receipt is under or by a contract or other instrument executed before

the passage of the act. For example, in *United States v. Jacobs*, 306 U. S. 363, the Court held that where lands were conveyed to a husband and wife as a joint tenancy and subsequently a statute was passed providing that there should be included in the gross estate of a decedent the full value of property owned by him and any other person in joint tenancy to the extent that the consideration therefore is traceable to the decedent, upon the death of the husband the tax may be applied upon the full value of the property held by them in joint tenancy and purchased by the funds of the decedent. The Court expressly held that this was not retroactive taxation since the tax was not upon the transfer in favor of the wife at the time of original purchases but upon the change in the wife's status and ownership with respect to the property on the decedent's death. There are other cases holding that the enlargement or coming into possession or enjoyment of money or some property, estate or interest at the death of another even though under a right, title or contract transferred or acquired or entered into during the life of the other and prior to the enactment of the taxing statute is a taxable event and the tax laid upon such event not retroactive. Some of them are:

Orr v. Gilman, 183 U. S. 278;
Chandler v. Kelsey, 205 U. S. 466;
Whitney v. State Tax Commission, 309 U. S. 530;
Moffitt v. Kelly, 218 U. S. 400;
Reinecke v. Northern Trust Co., 278 U. S. 339.

What is the nature of the North Carolina inheritance tax? It is clear that the inheritance tax is not an estate tax, similar to the Federal tax, but is a succession tax. In an estate tax the levy is against the net estate as a unit and the net estate is the measure of the tax without regard to the relationship of the beneficiaries. On the other hand an inheritance or succession tax is based upon the net distributive amount which the individual beneficiaries will receive.

The following appears in *Bethea v. Sheppard*, 143 S. W. (2d) 997 (1940):

"We do not regard as necessary a lengthy discussion of the distinction recognized by the authorities between the Federal estate tax and the inheritance or succession tax levied by the various states. Suffice it to say that the Federal estate tax is imposed upon the right of grantor or transferor to transfer property and that the inheritance or succession tax by the State is imposed upon the right to receive or succeed to the possession or enjoyment of property. . . ."

As stated in *Wachovia Bank & Trust Co. Executor v. Maxwell*, 221 N. C. 528, the tax "is not a tax on the property itself, but on the right to acquire it by descent or testamentary gift"; and "is an excise tax upon the privilege of receiving property from a decedent by reason of his death." *Hagood v. Daughton*, 195 N. C. 811.

In view of the nature of the North Carolina inheritance tax and the authorities referred to above, it is entirely possible that the courts would sustain the tax upon the property transferred by Mr. Buckman. However, this is speculative, and in view of the fact that *Coolidge v.*

Long has not been specifically overruled, I am advising that the decision in that case should be accepted as controlling in the absence of clearer authority supporting the levy of the tax. In my opinion, you should exclude the property conveyed by Mr. Buckman from the tax base.

SALES AND USE TAXES; CONSOLIDATED VULTEE AIRCRAFT CORPORATION;
CONTRACT NXs-5180 AND AMENDMENT NXs-5180(SPM6)

25 October, 1943.

You have referred to me the letter of 13 October, 1943, from the Consolidated Vultee Aircraft Corporation, with reference to its sales and use tax liability under the contract and amendment referred to above, with the request that I give you my opinion upon the questions involved.

The contract has been entered into by the Federal Government, through the Navy Department (Bureau of Supplies and Accounts), and the Consolidated Vultee Aircraft Corporation (hereinafter referred to as "taxpayer"). Under the contract the taxpayer undertakes to provide services and to furnish and deliver materials and supplies to comply with orders issued from time to time by the Chief of the Bureau of Aeronautics to "flight deliver" airplanes from place to place, to repair, alter and service such airplanes and install equipment and fuel therein; to furnish services and materials to create and train an organization of employees in accordance with approved plans to perform the services referred to above; and to furnish services and materials necessary to comply with orders and instructions issued from time to time by the Chief of the Bureau of Aeronautics to flight deliver airplanes. As compensation for furnishing the services and materials called for in the contract the Federal Government agrees to pay the contractor (1) an amount for each calendar month consisting of full compensation for indirect, administrative and supervisory costs and the contractor's stipulated monthly fee and (2) allowable cost as defined in the contract. The contract is thus a cost-plus-a-fixed-fee contract rather than a fixed price or lump-sum contract.

The contract provides that title to all materials, supplies and equipment for the cost of which the contractor is entitled to be reimbursed under the contract shall "automatically pass to and vest in the government upon delivery to the contractor, at the contractor's plant or at such other time and place as the inspector of naval aircraft may designate in writing, in the case of any such property which is purchased for the performance of this contract, or, in the case of property not so purchased, upon the allocation thereof to the contract by commencement of processing or use thereof or otherwise."

While the contract does not go into detail with regard to the use by the contractor of the tangible personal property which it may purchase in fulfilling the contract, it seems to contemplate that some of said tangible personal property shall be incorporated into

the airplanes in the form of repairs or alterations and that some of said property will not be incorporated into the airplanes but will be used in order to carry out the services which the contractor undertakes to render. As I read the contract, it does not, however, contemplate that the taxpayer shall manufacture or fabricate any articles of tangible personal property for sale to the Federal Government. If taxpayer undertakes by the contract to manufacture or fabricate any product for the Federal Government, the exemption contained in Section 406(d) of the Revenue Act would be applicable and would exempt from tax sales to and purchases by taxpayer of such tangible personal property as would enter into and become a part of the manufactured product.

If taxpayer does not manufacture or fabricate, under this contract, articles of tangible personal property, it is my opinion that sales to and purchases by taxpayer of tangible personal property used both in rendering services under the contract and also in repairing or altering airplanes are taxable. Prior opinions of this office have adopted the principles that sales to and purchases by a cost-plus-a-fixed-fee contractor with the Federal Government are not entitled to exemption unless the contract constitutes the contractor an agent of the Federal Government for the purpose of purchasing property to be used in fulfilling the contract. I have not been furnished copies of the purchase orders authorized under this contract. However, the contract alone does not constitute taxpayer the purchasing agent of the Federal Government. Article I of the contract provides that taxpayer "shall furnish and deliver all of the supplies or services described in Schedule A." Thus, taxpayer undertakes, as an independent contractor, to provide the supplies and services.

While the Federal Government undertakes to reimburse taxpayer for the cost of materials and supplies, the contract does not authorize the contractor to pledge the credit of the Federal Government. If the contractor should, for any reason, fail to pay for the supplies or equipment, the vendors would have no right of action against the Federal Government. Hence, the taxpayer is an independent purchaser under the following test laid down by the Supreme Court in *Alabama v. King & Boozer*, 314 U. S. 1, 10:

"But it seems plain . . . that under the provisions of the statute the purchaser of tangible goods who is subjected to the tax measured by the sales price is the person who orders and pays for them when the sale is for cash or who is legally obligated to pay for them if the sale is on credit."

The fact that Section 4(a) of Schedule A provides that title to property shall vest in the Federal Government upon delivery to the contractor does not alter this conclusion since the sale to the contractor may be complete at the time of the delivery of the property.

I, therefore, conclude that sales to and purchases by taxpayer of tangible personal property used in fulfilling this contract are subject to North Carolina sales and use taxes, except as they may be entitled to an exemption under Section 406(d).

REVENUE ACT, SECTION 115; DEALERS IN HORSES AND/OR MULES

27 October, 1943.

Mr. John R. McLaughlin has requested a ruling upon the liability of one of his clients under Section 115 of the Revenue Act, which lays a privilege or license tax upon dealers in horses and/or mules.

The dealer in question purchases mules which are raised in certain Western states. The purchases are made either in person in the Western states or by mail, in which event the horses and mules are shipped f.o.b. at the point of origin to the dealer's place of business in North Carolina. The horses and mules in question are purchased by the dealer for the purpose of resale at a South Carolina market. However, the train trip from the Western points to the South Carolina market is so long that the horses and mules need reconditioning before resale. Therefore, it is the practice of the dealer to have the horses and mules shipped to his place of business in North Carolina and to keep them there for a short period of time during which they can be groomed and fed and otherwise treated to overcome the effects of the long trip. After reconditioning the horses and mules are transported in one of the dealer's trucks to South Carolina where they are sold at a well known horse and mule market.

The precise question is whether the \$3.00 head tax levied by Sub-section (a) of Section 115 is applicable to the horses and mules handled in the manner outlined above.

Section 115 is found in Schedule B of the Revenue Act and is, therefore, to be construed as a "license tax for the privilege of carrying on the business, exercising the privilege, or doing the act named. . . ." See Section 100. The tax is expressly levied upon those "engaged in the business of purchasing for the purpose of resale, either at wholesale or retail, horses and/or mules" at the rate of \$3.00 per head "on all such horses and/or mules purchased for the purpose of resale." The head tax is due and payable immediately upon receipt of the horses and/or mules within this State.

The statute does not expressly confine the tax to horses and/or mules purchased for the purpose of resale in North Carolina; and it must be determined whether such a limitation must be implied.

The purchase of the horses and/mules (in the legal sense) clearly takes place outside of this State. The contract of sale is consummated beyond our jurisdiction. Furthermore, the resale of the horses and mules is completed beyond the jurisdiction of this State. Since the tax is levied upon the privilege of purchasing horses and/or mules for the purpose of resale, and since neither the purchase nor the resale occur within our taxing jurisdiction, it is my opinion that the taxable privilege has not been exercised in this State with regard to the horses and mules in question. The only activity in this State of the dealer with respect to these horses and mules is receiving them and conditioning them. He does not purchase them in this State nor sell them in this State and hence it is my opinion that the General Assembly did not intend to subject these horses and mules to the head tax.

SALES AND USE TAXES; FARMERS COÖPERATIVE DAIRY, INC.

28 October, 1943.

You have referred to this office certain questions relating to the sales and use tax liability of the Farmers Coöperative Dairy, Inc., of Winston-Salem, North Carolina.

The Farmers Coöperative Dairy is an association or corporation incorporated under the provisions of Public Laws 1921, Chapter 87, authorizing the organization of coöperative organizations for the marketing of farm products. The Farmers Coöperative Dairy, Inc. (hereinafter referred to as the "taxpayer") enters into marketing contracts with various producers of milk, cream and eggs for the marketing of their products. By virtue of this contract the producer subscribes to stock in the association and agrees to deliver to the association for home or farm use. The association agrees to sell all the milk and cream delivered by the producer. All net proceeds from the sale of milk, cheese, butter and other dairy products are placed in a general sales fund. Accounts are kept for each producer and each producer's account is subject to certain deductions for expenses and the maintenance of reserves. The association is authorized to borrow money on the products delivered by the producers "and to pledge the same as the absolute owner thereof." The producer's account is credited with the proceeds of the sale of his products less the authorized deductions for expenses and reserves.

The answers to some of the questions asked by the taxpayer regarding the tax liability depends upon whether taxpayer is to be considered as an original producer of the products which it sells or is not entitled to classification as an original producer. Whether taxpayer may be considered as an original producer depends on whether the contract between taxpayer and the producers constitutes taxpayer an agent of the producer or an independent purchaser from the producer. I have studied this contract and, while it is not entirely clear upon the point, I have concluded that the intent of the parties is that the taxpayer be constituted the marketing agent for the producers. When each producer delivers products to the taxpayer he is given a receipt showing the quantity and kind of products delivered and the amount credited to each member's account is based upon the amount so delivered less deductions for expenses and reserves. I have found nothing to indicate that the contract is one of sale by the producer and purchase by the taxpayer except the provision in Paragraph 8 authorizing taxpayer to pledge the products as the absolute owner thereof.

This provision standing alone indicates that the taxpayer purchases and acquires title to the products from the producer. However, when this provision is read with the other provisions of the contract, it is my opinion that its intent is, that the taxpayer may pledge the products *as though* it were the absolute owner thereof and that by this provision the producers intended simply to give the association full power to pledge the products as the agent of the producers in order

to eliminate the inconvenience of requiring all the producers to pledge in their own names. It is, therefore, my conclusion that the association is constituted the agent of the producers for the purposes of marketing their farm products and is not an independent purchaser.

The specific questions asked by the taxpayer and my opinion thereon are as follows:

(1) Q. Under the 1939 Revenue Act, prior to the 1941 amendments, is milk sold by the taxpayer to merchants for resale subject to tax?

A. Since the taxpayer may be considered an original producer of the milk, sales of unprocessed milk would be exempt from any tax under Section 406(1).

(2) Q. Under the 1939 Revenue Act, prior to the 1941 amendments, is butter sold by taxpayer exempt (a) at wholesale and (b) at retail?

A. If the butter was made by the producers, sales of such butter would be exempt under Section 406(1) as a product of the farm. If taxpayer makes the butter from milk furnished by the producers, sales of such butter to merchants for resale would be exempt under Section 406(a).

(3) Q. Under the 1939 Revenue Act, prior to the 1941 amendments, are sales of eggs exempt (a) at wholesale and (b) at retail?

A. Since taxpayer is an agent of the original producer, eggs would be exempt as products of the farm under Section 406(1).

(4) Q. Under the 1939 Revenue Act, prior to the 1941 amendments, would sales of chocolate milk, where the chocolate is mixed with the milk by taxpayer, be taxable?

A. Such sales would be subject to the 3 per cent tax if they were made to consumers. If they were made to merchants for resale, they would be exempt from the retail tax by virtue of Section 406(a).

(5) Q. Under the 1939 Revenue Act, prior to the 1941 amendments, are sales of cottage cheese which is made by the association from milk of the producers subject to tax?

A. Such cheese would be subject to the retail tax if sold to consumers but would be exempt from all tax if sold to merchants for the resale by virtue of Section 406(a).

(6) Q. Under the 1939 law, prior to the 1941 amendments, would sales of milkshakes prepared and sold by taxpayer over the counter be taxable?

A. These sales would be subject to the 3 per cent tax.

(7) Q. Under the 1939 Revenue Act, as amended in 1941, would sales by taxpayer of ice cream in cones over the counter or in milk shakes over the counter be taxable?

A. These sales would be subject to the retail tax since they could not be classed as sales for home consumption.

(8) Q. Under the 1939 Revenue Act, as amended in 1941, would sales by taxpayer of milk shakes or milk and ice cream mixed together be subject to tax?

A. These sales would be taxable for the same reason stated in the last answer.

INCOME TAXES; DEDUCTION OF BAD DEBT WHERE ENDORSER OF NOTE
PAYS NOTE ON INSOLVENCY OF MAKER

29 October, 1943.

You have referred to me the petition submitted by Honorable Irvine B. Watkins on behalf of his clients, Mr. R. E. Clements and wife, Eleanor D. Clements, with regard to the following phase of their income tax liability.

Mr. Clements, prior to 1936, acted as manager of a general supply business known as the Piedmont Supply Company, a corporation. From time to time Mr. and Mrs. Clements endorsed notes of the Piedmont Supply Company given to secure certain loans. The Piedmont Supply Company became financially involved and was insolvent upon the final liquidation of its business in 1936. No judgments were secured by the holders of the notes against the Piedmont Supply Company and Mr. and Mrs. Clements. In the year 1936 Mr. and Mrs. Clements were heavily indebted to various parties and were unable to meet all of their obligations at that time. The banks to whom the notes endorsed by Mr. and Mrs. Clements had been given allowed Mr. and Mrs. Clements to place their indebtedness as endorsers in the form of new notes secured by deeds of trust and providing for payment over a period of several years.

Mr. and Mrs. Clements contend that in filing their income tax returns with the State of North Carolina they are entitled to deduct each year as a bad debt the amount paid by them upon the indebtednesses to the banks secured by the deeds of trust. The Commissioner of Revenue, on the other hand, contends that the proper time to take the deduction was in the year 1936, on the ground that it was in that year that the debt was ascertained to be worthless. You request my opinion upon which of these conflicting contentions is correct.

Section 322(7) of the Revenue Act allows as a deduction in computing net income the following item:

"7. Debts ascertained to be worthless and actually charged off within the income year, if connected with business and, if the amount has previously been included in gross income in a return under this article." (Italic added.)

The present Federal Income Tax Law allows as a deduction "debts which become worthless within the tax year." However, the present wording was inserted by a 1942 amendment, and prior to that amendment the wording of the Federal provisions was substantially similar to the underlined wording of the State provision. Prior to the amendment there were various decisions and rulings on the Federal provision which may be considered persuasive in considering the proper interpretation of the State provision in view of the similarity between the two provisions at the time the decisions and rulings were made.

Under the Federal law it was held that an endorser, guarantor, or surety who pays the debt of the principal debtor has a claim against the principal debtor through the doctrine of subrogation; and if

such claim is worthless when the payment is made, he is entitled to a bad debt deduction in the year of payment, not because of the payment but because the payment gives rise to a claim which becomes a bad debt. See Prentice-Hall, Federal Tax Service, paragraph 13,825; *Howell v. Commissioner* (C.C.A. 8) 69 F. (2d) 447 (certiorari denied June 4, 1934), affirming 22 B.T.A. 140.

Thus, where an endorser paid a note in installments in 1930, 1931 and 1932, it was held that an indebtedness of the principal to such endorser arose at the times of the various payments and constituted a bad debt in each instance, which was deductible only from the gross income of the years in which payments were made. *E. A. Robers and wife*, 36 B.T.A. 549. See also Prentice-Hall, Federal Tax Service, paragraph 13,881.

It is my opinion that the reasoning of these authorities is sound and that the contention of Mr. and Mrs. Clements must be allowed. In 1936 their liability, being a secondary liability, was potential only. No action was brought against the principal to determine the insolvency of the principal and no judgment was rendered against the endorsers fixing them with liability at that time. Not until they actually made payments upon the amortized indebtedness, at which times the principal was clearly insolvent, could it be said that any part of the debt was definitely ascertained to be worthless.

REVENUE ACT, SECTION 150; TAX ON TOWEL SUPPLIER EMPLOYING LESS
THAN FOUR PERSONS AND PERFORMING WORK BY HAND;
RALEIGH TOWEL SUPPLY COMPANY

1 November, 1943.

In a memorandum dated 20 September, 1943 I informed you that in my opinion the Raleigh Towel Supply Company was liable for a tax of \$125.00 under Section 150 of the Revenue Act on account of its operations as outlined in that memorandum.

Since the date of that memorandum I have reconsidered my opinion and given considerable thought and study to the question involved. I am now convinced that the opinion expressed in that memorandum was erroneous.

The wording of the first proviso in Section 150 is broad enough to include the business of the Raleigh Towel Supply Company. I think it may be reasonably said that since the work of sorting and packing the towels is done by hand and since the proviso expressly applies to towel supply companies through the reference "or other concern herein referred to," the one-third rate is applicable. This conclusion has been reinforced by the information (which I did not have at the time of the memorandum referred to) that the Raleigh Towel Supply Company has been taxed on the lower basis in prior years.

It is a well settled rule of statutory construction that the administrative interpretation of a statute is entitled to weight in seeking the legislative intent. *Cannon v. Maxwell*, 205 N. C., 420; *Powell v. Maxwell*, 210 N. C., 211; *Hannah v. Board of Commissioners*, 176 N. C., 395.

Accordingly, I withdraw my opinion of 20 September, 1943, and advise that the Raleigh Towel Supply Company should be taxed upon the basis of one-third of the tax stipulated in the schedule in Section 150.

I am informed that the Durham Towel Supply Company does business within the City of Durham on the identical basis that the Raleigh Towel Supply Company does business in the City of Raleigh. If this is true, the tax for the Durham Towel Supply Company should likewise be adjusted to the one-third basis.

INTANGIBLE TAXES; REVENUE ACT, SECTION 706; COMPUTATION OF
VALUE OF BENEFICIAL INTEREST IN FOREIGN TRUST WHERE
BENEFICIARY HAS RIGHT TO INCOME FOR LIFE

3 November, 1943.

Honorable Brandon P. Hodges has referred to me certain correspondence from Mr. Curtis Bynum with reference to the assessment of additional intangible tax against Mr. Bynum's sister, Miss Suzanne Bynum, for whom Mr. Bynum is the general agent, and has requested my opinion upon the question involved.

Miss Bynum is a beneficiary of a trust which is being administered in Maryland. Under the terms of the trust instrument she is entitled to a life estate the corpus of the trust which consists of stocks, bonds and notes. Section 706 of the Revenue Act levies an intangible tax of thirty cents on every \$100.00 of total actual value of "the beneficial or equitable interest on December thirty-first of each year of any resident of this State, or of a non-resident having a business, commercial or taxable situs in this State, in any trust, trust fund or trust account (including custodian accounts) held by a foreign fiduciary." The sole question to be considered is the correct method of ascertaining Miss Bynum's "beneficial or equitable interest" and computing the tax thereon.

The market value of the corpus as of December 31, 1941, was \$16,274.27. In computing the tax the taxpayer calculated interest on this amount at the rate of 4½ per cent (deriving this rate from C. S. 1791), and thus arriving at an annuity value of \$732.34. The latter figure was then multiplied by the figure 10.617, which, according to the tables set forth in C. S. 1790 and C. S. 1791, represents the present worth of an annuity of a person fifty-five years of age, which was the age of the taxpayer. The present worth was thus calculated at \$7,725.25 and taxpayer paid tax upon this valuation.

The Commissioner of Revenue refuses to accept this as the proper basis and assessed additional tax by computing the annuity value on the basis of the actual income received from the trust by the taxpayer during the year 1941, which was \$1,233.44, and multiplying this by the figure 10.617, arriving at this figure as stated above. By this computation the present worth of the annuity was calculated to be \$13,095.43. Taxpayer contends that the method of computation adopted by the Commissioner is illegal.

The intangible tax, which is levied by Schedule H of the Revenue Act, is an ad valorem tax upon intangible personal properties. One

class of the properties which are subjected to tax is the beneficial or equitable interest of a resident of this State in a foreign trust, and the statute prescribes that the tax shall be thirty cents on every \$100.00 "*of the total actual value thereof.*" It is, therefore, necessary to determine what is the total actual value of the beneficial or equitable interest. The legal title to the corpus of a trust is vested in the trustees and the beneficiary's interest is equitable in nature. It is this interest which Section 706 taxes. Where the beneficiary has only a life estate the beneficial or equitable interest is simply *the right* to receive the income of the trust for life. It is this right which must be valued for purposes of the tax in question.

It is obvious that the right to receive income is not necessarily measured fairly by the actual income received. For example, the corpus might be unproductive of income for several years, yet good prospects of future income would give the right to receive income a substantial value, and the receipt of income for several years would not be a reliable measure of the value of the right to receive income if the prospects were that such income would be diminished or cut off in future years. Furthermore, as the taxpayer has pointed out, under some circumstances the method used by the Commissioner would result in a valuation of beneficial interest at a figure in excess of the total value of the corpus.

In the ultimate sense the value of the beneficial or equitable interest would seem to be that value at which the beneficiary, not having to sell it, would sell it to a purchaser not having to buy it if the interest was salable.

In my opinion the procedure for a determining the value of the beneficial interest as of December 31 of each year is to determine the rate of interest at which the annuity is to be computed by taking into consideration the market value of the securities, their dividend history, the financial condition of the respective companies in which they are held, and all other factors which would aid in arriving at the prospects of income from the corpus. This basis would necessarily vary from year to year. While the certainty of a formula would be much more acceptable from the standpoint of tax administration, I regret that I cannot find such a formula in the law. The values change with changing conditions.

I cannot agree with taxpayer that C. S. 1791 provides a formula for this situation. The provision in that statute is as follows:

"When a person is entitled to the use of a sum of money for life, or for a given time, the interest thereon for one year may, computed at four and one-half per cent, be considered as an annuity and the present cash value be ascertained as herein provided."

I do not think this provision was intended to be applicable to the situation under consideration. This statute requires that the 4½ per cent be computed on the sum of money to which the person is entitled for life, and is inapplicable to the situation under consideration for two reasons: (1) if the income for life is considered the sum

referred to, such sum is speculative, indefinite and unknown; and (2) there is no authority to take the value of the corpus, or any part thereof, as such sum, since taxpayer is not entitled to the corpus or any part thereof, but only the income therefrom.

I conclude that the valuation of the beneficial interest can be arrived only by an analysis, of each trust, each year. I regret that I do not find authority for a more certain and satisfactory basis of valuation.

INCOME TAXES; ADJUSTMENT OF COST BASIS BY AMOUNT OF DEPRECIATION ALLOWABLE RATHER THAN BY AMOUNT ALLOWED

4 November, 1943.

You have referred to me a letter of 13 October, 1943, from Mr. A. L. Brooks with reference to a proposed additional income tax assessment on Mr. Brooks, and have requested my opinion upon the question raised therein.

In 1927 the taxpayer purchased a building and lot which he sold at a loss in 1940. During the period in which he owned the property, he received certain income therefrom in the form of rents. For the years 1927, 1928, and 1929, taxpayer claimed no depreciation on the building as a deduction on his income tax returns. For the years subsequent to 1929, depreciation was claimed and allowed. In computing his income tax liability to the State for 1940, taxpayer adjusted the cost basis by deducting the amount of depreciation claimed from 1930 to 1940. You have proposed an additional assessment of tax based upon depreciation which might have been taken for the years 1927, 1928, and 1929. If such depreciation had been taken, taxpayer's loss would have been reduced and hence his taxable income raised. Taxpayer objects to the proposed assessment on the grounds that the Revenue Act permits but does not require depreciation deductions and hence that deductions not claimed should not be taken in account; that his contention is supported by *State v. Nygaard*, 217 N. W., 685 (Wisc. 1928); and that the equities support his position.

The relevant statutory provisions are as follows:

Section 322(6) of the Revenue Act of 1939 allows as a deduction in computing net income "losses actually sustained during the income year of property used in trade or business. . . ."

Section 319 provides that "for the purpose of ascertaining the gain or loss from the sale or other disposition of property, real, personal, or mixed, the basis shall be . . . the cost thereof." No definition of cost appears in the act.

Section 322(8) allows as a deduction in computing net income "a reasonable allowance for depreciation and obsolescence of property used in the trade or business" and this shall be "measured by the estimated life of such property."

There is no provision of the Revenue Act which clearly controls the question at hand. I have found no formal opinion of the Attorney General upon the matter. I am informed that the administrative interpretation consistently followed by the Commissioner of Revenue

is that the law intends the cost basis to be adjusted by the depreciation which was allowable, whether claimed or not, and this interpretation has been concurred in in an unwritten opinion based upon *United States v. Ludey*, 274 U. S. 295. The taxpayer has requested a full reconsideration of the matter, and this letter represents my views after such reconsideration.

Taxpayer first contends that the Revenue Act does not provide for an adjustment of the cost basis of property for depreciation. While the state statute does not define "basis" or "cost," a well established body of administrative practice has grown from an interpretation that the Revenue Act intended original cost to be properly adjusted by the addition of improvements, etc., and the deduction of depreciation. This administrative interpretation is entitled to weight in seeking the legislative intent. *Cannon v. Maxwell*, 205 N. C. 420. Further, this construction is entirely sound in principle. As stated in *United States v. Ludey*, *supra*, when the property is sold, "the thing then sold is not the whole thing originally acquired," and "the amount of the depreciation must be deducted from the original cost of the whole in order to determine the cost of that disposed of." Further, in *Appeal of Even Realty Co.*, 1 B.T.A. 355, the same problem was considered by inquiring into the meaning of "basis" in the corresponding provision of the federal statute. The board held:

"We have no hesitation in holding that Congress in using the word *basis* meant nothing but *starting point* or *primary figure* in the computation of gain or loss, and had no intention of restricting that computation to a simple subtraction of the basis from the selling price or vice versa. It expected the computation to include all adjustments necessary to a logical ascertainment of gain or loss."

I conclude that the intent of Section 319 is that the original cost must be properly adjusted in computing gain or loss.

Taxpayer also contends that the Revenue Act does not require the deduction of depreciation, but merely permits it, and he may exercise the option to take the deduction or not. Section 322 provides that "in computing net income there shall be allowed as deductions the following items: (8) a reasonable allowance for depreciation," etc. In *Appeal of Even Realty Co.*, *supra*, the Board of Tax Appeals considered a similar contention based upon a similar statutory provision and ruled against the taxpayer in the following language:

"At the hearing of this appeal, counsel for the taxpayer laid stress upon the language of the statute providing that the deduction shall be allowed. He insisted that *allowance* indicated an option to the taxpayer to take the deduction or not as he saw fit. Of course a taxpayer may neglect or refuse to make a correct computation of income in a given year and pay a greater tax than he owes—and nobody will force the excess tax back upon him. But that does not entitle him to adjust matters by an improper computation in a later year when the tax rate is higher or when the statute of limitations has precluded the correction of the earlier return. We do not think the word *allow* intended any option. As used, it merely means *consider* or *subtract*. One weighing goods in packages *allows* for the tare in figuring net weight. In computing profit on a sale one *allows* or *makes al-*

allowance for cost when he deducts it from the sale price. Instead of saying 'the following amounts shall be subtracted,' Congress said 'there shall be allowed as deductions,' meaning the same thing. And where it said 'a reasonable allowance for the exhaustion' it merely meant a *reasonable amount*. To hold that the use of the word *allow* and its derivatives indicated an option in the taxpayer to claim his deduction, or to treat the fact entitling him thereto as if it had not occurred and to make future returns on the basis of its nonoccurrence, would lead to many absurdities."

It is my opinion that the reasoning of the board in this case is persuasive and should be accepted.

Taxpayer further contends that as a matter of principle the deduction of allowable, but unclaimed, depreciation should not be made in ascertaining adjusted cost and ask the Commissioner to follow *State v. Nygaard, supra*, a decision of the Supreme Court of Wisconsin. This case supports taxpayer's position and is based upon the following proposition:

"The taxpayer should pay upon his actual income. If he makes no deductions for depreciation he has not withdrawn any of his income from taxation, and he should not be made to pay another tax."

Since the reasoning of the *Nygaard* case leads to a conclusion different from that reached by the United States Supreme Court in the case of *United States v. Ludey, supra*, which the Commissioner has heretofore relied upon, the latter decision will be referred to. While the present federal statute settles the question at issue adversely to the taxpayer with respect to his federal income tax liability (see I.R.C. Sec. 113(b)(1)(B); Prentice-Hall, Federal Tax Service, par. 10696), the decision in the *Ludey* case, *supra*, was based upon a construction of the Federal Revenue Act of 1916 which did not contain the present express provisions that allowable depreciation, at the minimum, must be deducted. The decision was reached after a consideration of the general purpose of depreciation deductions and may therefore be considered as clear authority upon the question at hand.

In *Ludey's* case, the court was presented with the question whether in determining the cost of oil properties sold, there should be deducted from the original cost the aggregate deduction for depreciation and depletion which were allowable. With respect to this question the Court said:

"The court of claims erred in holding that no deduction should be made from the original cost on account of depreciation and depletion; but it does not follow that the amount deducted by the Commissioner was the correct one. The aggregate for depreciation and depletion claimed by *Ludey* in the income tax returns for the years 1913, 1914, 1915, and 1916, and allowed, was only \$5,156. He insists that more cannot be deducted from the original cost in making the return for 1917. The contention is unsound. *The amount of the gain on the sale is not dependent on the amount claimed in earlier years.* If in any year he has failed to claim, or has been denied, the amount to which he was entitled, rectification of the error must be sought through a review of the action

of the Bureau for that year. He cannot choose the year in which he will take a reduction. On the other hand, we cannot accept the government's contention that the full amount of depreciation and depletion sustained, whether allowable by law as a deduction from gross income in past years or not, must be deducted from cost in ascertaining gain or loss. Congress doubtless intended that the deduction to be made from the original cost should be the aggregate amount which the taxpayer was entitled to deduct in the several years." (Italic added.)

See also *Reick v. Heiner*, 25 F. (2d) 453 (C.C.A. 3), which holds that there must be deducted from the original cost the aggregate depreciation which taxpayer was entitled to claim. I do not find that the *Ludey* case has ever been overruled or modified with respect to the point in question.

The rationale of the view that all *allowable* depreciation must be deducted from original cost is clearly set forth in *Appeal of Even Realty Co.*, 1 B.T.A. 355. In that case, which was decided before the *Ludey* case, the taxpayer contended it was entitled to exclude depreciation not claimed in computing the basis for determining gain or loss. The Board referred to the pertinent provisions of the Revenue Acts of 1913, 1916, 1917, and 1918, which authorized deductions as follows:

1913: "A reasonable allowance for depreciation by use, wear and tear of property, if any."

1916 and 1917: "A reasonable allowance for the exhaustion, wear and tear of property arising out of its use or employment in the business or trade."

1918: "A reasonable allowance for the exhaustion, wear and tear of property used in the trade or business, including a reasonable allowance for obsolescence."

These provisions are quoted to show their similarity, and hence pertinence, to the provision in the State Revenue Act.

The Board said:

"The various acts provided for deductions in computing the taxable income from property held. It does not follow that if a taxpayer, in any year or as a regular practice, refrained from claiming them, he becomes entitled to have the *facts*, upon which they might have been based, ignored in computing gain or loss upon the sale or other disposition of the property. The very reasons for allowing the deductions necessitate the consideration, in computing gain or loss, of the facts upon which the deductions could be based.

"When a manufacturer sells his product he is really selling a composite of four or five things: (1) the materials entering into the product; (2) labor has been applied to them; including the effort of executives and salesmen; (3) that proportion of the value of the machinery and of (4) the buildings which is consumed in the manufacture of the product, and (5) in some cases a proportionate part of the monopoly granted by patents, exhausted during the process of production. Until the manufacturer has recovered the cost or basic value to him of the proportionate parts of these items attributable to a unit of his product sold, he cannot properly be said to have received income upon its sale, and only the excess of the sales price realized over the sum of these items (whatever particular form they may take)

is truly income. . . . Because of the difficulty of attributing to each article sold or to the sales in a taxable year an exact sum representing the proportion of basic value of machinery, buildings, patents, etc., entering into such sale, the statutes have consistently provided for a *reasonable allowance*. And on the same theory a reasonable allowance for the recoveries made against capital in the sale of products should be taken into consideration in determining the gain or loss realized upon the sale of such capital assets. If a manufacturer has operated machinery in the production of commodities and has recovered, through their sale, half of the cost or *basic* value of the machinery and then sells what is left of the machinery, he certainly should not be permitted to compute his gain or loss on the sale by reference only to the cost or basic value of the machinery and its sale price without adjustment for the intervening recoveries of capital. . . .

"What is true of a manufacturer is equally true of the owner of an office building. The instant taxpayer bought a building in 1909, rented offices in it until 1920, and then sold it. Presumably the value of the building was in part used up during that period, and the rents received were attributable, before the discovery of income, to the reimbursement of the owner for such capital exhaustion or loss. . . .

"The taxpayer held its building, upon which presumably there was wear and tear—and it has not shown that there was not—for a period of years. It must be presumed to have recovered or to have lost this reduction in value in the respective years of ownership to which it is attributable according to approved methods of accounting."

This view has been followed in many other decisions of the Board and the Courts. See Paul & Mertens, Law of Federal Income Taxation, Section 18.178, note 98.

It will be noted that this reasoning also used by Justice Brandis in the Ludey case in stating:

"The theory underlying this allowance for depreciation is that by using up the plant a gradual sale is made of it. The depreciation charged is the measure of the cost of the part which has been sold."

The view of the Nygaard case that if the depreciation has not been claimed as a deduction, no income has been withdrawn from taxation and that to reduce the cost basis by this depreciation would be in effect to tax the same income twice loses force when applied to the situation where the taxpayer for some of the years involved had no taxable income and hence could get no benefit from claiming the depreciation deduction. And it is in such loss years that the taxpayers customarily fail to deduct for depreciation. In *Hardwick Realty Co., Inc. v. Commissioner*, 7 B.T.A. 1108 (later affirmed, 29 F. (2d) 498 (C.C.A. 2d 1928), cert. ben. 279 U. S. 876), the board said:

"Deprecation is not made dependent on income or lack of it, but is a sum which should be set aside each year, in order that at the end of the useful life of a building, the aggregate sum will provide an amount equal to the original cost."

See also Paul & Mertens, *supra*, Section 18.178.

To adopt taxpayer's view would require that the Commissioner decline to follow a decision of the United States Supreme Court, which

has higher dignity than the decision of any state court; that he declined to follow the well settled administrative practice which is entitled to weight in construing the Revenue Act (see *Cannon v. Maxwell, supra*, and Revenue Act, Section 933); and that he reject the reasoning regarding the nature and function of depreciation deduction as outlined in appeal of Even Realty Co., *supra*, which reasoning, in my opinion, is entirely sound.

In view of the foregoing considerations I advise that in my opinion the proposed assessment is valid.

SALES AND USE TAXES; TAX ON MEALS SOLD BY FORSYTH COUNTY
AIRPORT COMMISSION, INC.

8 November, 1943.

You state that the Forsyth County Airport Commission, Inc., is a nonprofit corporation, the principal business of which is operating an airport in Forsyth County. In the course of its business the corporation operates a restaurant in which meals are served to the general public, to the Eastern Air Lines Corporation, and to the students of the Piedmont Aviation Company. Sales to such students are paid for by the United States Government as an expense in its program of training pilots. You inquire whether the corporation is subject to sales taxes on the meals thus served.

While you do not submit the details of the organization of the corporation, you state that the argument has been made on behalf of the corporation that it is an agency of the county and as a governmental unit is entitled to exemption. Assuming that the corporation is an agency of the county, I am unable to agree that the exemption exists on this ground. The decisions of the Supreme Court referred to in many prior opinions of this office point out the distinction between activity of the county which is purely governmental in nature and such activity which is proprietary in nature. It has been the view of this office that the law permits the application of taxes with respect to the proprietary activity. When a county or an agency thereof undertakes to sell meals to the public and others it has clearly transcended the limits of purely governmental action and has invaded the field of private enterprise. I, therefore, conclude that the corporation is not entitled to exemption merely because it is an agency of the county, if such is the case.

The only remaining question would be whether sales by the corporation to the Piedmont Aviation Company are exempt from tax in view of the fact that the Piedmont Aviation Company is reimbursed for such sales by the Federal Government. Section 406(e) of the Revenue Act exempts from tax "the gross receipts from sales of tangible personal property which the State is prohibited from taxing under the Constitution or laws of the United States of America or under the Constitution of this State." A sale directly to the Federal Government is entitled to exemption under this section. Further, a sale to an agent or agency of the Federal Government is entitled to such exemption. I do not have sufficient information before me to form a conclusion as to whether the Piedmont Aviation Com-

pany is an agent of the Federal Government. The existence of such agency must be determined by reference to the contract between the company and the government. If the company is an independent contractor undertaking to furnish meals to the students without acting as agent of the Federal Government, sales to the company would clearly be taxable. The fact that the Federal Government bears the ultimate burden of the meals does not of itself offer a ground for exemption. *United States v. King & Boozer*, 314 U. S. 1.

SALES AND USE TAXES; SALES TO YOUNG MEN'S CHRISTIAN ASSOCIATION

8 November, 1943.

You inquire whether in my opinion sales of tangible personal property to the Young Men's Christian Association of Raleigh, North Carolina, Incorporated, are exempt from sales and use taxes. You enclose a letter from Mr. Wyatt Taylor stating that the Young Men's Christian Association "is a benevolent and charitable organization deriving its subsistence from contributions and a few small business features, the profits from which are used for the furtherance of its character-building activities."

Section 406(q) of the Revenue Act exempts from tax:

"Sales of tangible personal property to hospitals not operated for profit, churches, orphanages, and other charitable or religious institutions or organizations not operated for profit, and educational institutions principally supported by the State of North Carolina, when such tangible personal property is purchased for use in carrying on the work of such institutions or organizations."

If the Young Men's Christian Association qualifies for exemption under this provision, it must be found that it is a "charitable or religious" institution or organization not operated for profit. The phrase "not operated for profit" means, in my opinion, an operation under which by virtue of the charter or articles of organization it is impossible for any private person to make a profit through the ownership of stock or otherwise. Salaries received by employees are of course considered operating expenses if they are reasonable.

I have not been provided with a copy of the charter of the Young Men's Christian Association of Raleigh but if it is engaged exclusively in charitable and religious work and is a nonprofit corporation, sales to and purchases by said corporation would be entitled to exemption from sales and use taxes with respect to tangible personal property purchased for use in carrying on the work of the corporation.

SALES TAX; SCHEDULE E; RETURNS; CAROLINA MOTOR CLUB

13 November, 1943.

Receipt is acknowledged of your letter of November 12 in which you state that under a special agreement to which the law makes no reference, the Carolina Motor Club is in some instances permitted to collect sales tax on the sale of automobiles. You desire my opinion

as to whether under these conditions the Carolina Motor Club is a taxpayer within the meaning of Section 407 of the Revenue Act of 1939, as amended.

Section 407 of the Revenue Act of 1939, as amended, provides that every taxpayer liable for the tax imposed under the provisions of Schedule E of Article V shall on or before the fifteenth day of the month make out or prepare return on the blank report form furnished by the Commissioner of Revenue showing the total gross sales, the sales exempted from tax, the net taxable sales, the amount of tax covering sales in the preceding month, and shall mail same together with the remittance for the amount of the tax to the Commissioner. The Section further provides: "Every taxpayer who pays the tax imposed by this Article and Article IX, Schedule I, shall be entitled to deduct from the amount of the tax for which he is liable and which he actually pays, a deduction of three per cent (3%)."

It appears to me from the facts contained in your letter that the Carolina Motor Club is acting as a collecting agent of the Revenue Department under a special agreement and that the Carolina Motor Club would not, in the absence of a contract with the Revenue Department, be liable for the taxes which it collects and remits to the Revenue Department. It is my opinion that the General Assembly, in allowing the 3 per cent deduction provided for in Section 407, intended that it should apply only to persons who were liable under the law without a special contract for the payment of the taxes on which the deduction is claimed. It therefore necessarily follows that in my opinion the Carolina Motor Club would not be a taxpayer within the meaning of Section 407 of the Revenue Act of 1939, as amended, where it receives sales tax under a special agreement with the Revenue Department.

SALES OF SACRAMENTAL WINE; LICENSE

20 November, 1943.

You inquire whether a manufacturer or distributor of wines whose place of business is outside North Carolina may be required to be licensed under Section 518½ of the Revenue Act if the only wine shipped by said manufacturer or distributor to wholesalers in this State is wine for sacramental purposes.

Section 518½ requires every nonresident desiring to engage in the business of selling beverages described in Section 501 in this State to secure a permit, post a bond, and pay a tax of \$150.00. The beverages described in Section 501 are, generally speaking, beer and unfortified wines. I understand that the wine used for sacramental purposes is unfortified.

It is clear that such nonresident would have to comply with the provisions of Section 518½ unless exempted by some other provision of law. The only other provision that relates to this matter is Section 3411(t) of the Consolidated Statutes, as amended, which is as follows:

"Sec. 3411(t). *Wine for Sacramental Purposes.* It is lawful for any ordained minister of the gospel who is in charge of a church and at the head of a congregation in this state to receive

in the space of ninety consecutive days a quantity of vinous liquor not greater than five gallons, for use in sacramental purposes only, and it shall be lawful for him to receive same in one or more packages or one or more receptacles. (1923, c. 1, s. 20; 1935, c. 114)."

Section 3411(b) also provides that the prohibition against manufacturing, selling, etc., intoxicating liquor, which is still in force in the so-called "dry" counties, does not apply to liquor for non-beverage purposes and wine for sacramental purposes, which "may be manufactured, purchased, sold, bartered, transported, imported, exported, delivered, furnished, and possessed, but only as provided by Title 11 of the Volstead Act. . . ."

Both of the statutes quoted above relate only to the lawfulness of selling, etc., the sacramental wine without reference to any tax questions. Hence, these statutes are not controlling in the question of the liability of a seller of sacramental wine for taxes, and it is my opinion that Section 518½ requires the nonresident selling only sacramental wines in this State to comply with the provisions of that Act. The exemption as to sacramental wines does not extend to the tax, or to any provision dealing with the collection of the tax. Sacramental wine is to be considered, for tax purposes, to be in the same status as any other unfortified wine for tax purposes.

INTANGIBLE TAX; RATE APPLICABLE TO CASHIER'S CHECK

2 December, 1943.

You have requested my opinion on a question which has arisen in connection with the intangible tax liability of Mr. R. A. Parsley of Wilmington, North Carolina.

According to the facts presented to me, Mr. Parsley, as of December 31, 1942, was the holder of a cashier's check from the Peoples Saving Bank and Trust Company in the sum of \$17,000. The Commissioner of Revenue notified Mr. Parsley that he was liable to the State for intangible tax on this check at the rate of fifty cents on every one hundred dollars of the actual value thereof. This assessment was made on the theory that a cashier's check represents an evidence of debt and is, therefore, taxable under the provisions of Section 704 of the Revenue Act. The taxpayer objects to this finding and contends that the tax on the check should be computed at the rate of ten cents on every one hundred dollars of the total valuation, which is the rate levied in Section 701 of the Revenue Act on money on deposit. He is of the opinion that bank checking accounts, certificates of deposit, cashier's checks, and certified checks, all represent money on deposit in a bank, differing only in the form of the bank's acknowledgment of its custodianship from the payee.

The Commissioner bases his position on his printed regulation Number B(9), which contains the following language:

"Cashier's checks, treasurer's checks, certified checks, checks on correspondent or other banks, purchase drafts, etc., are subject to the intangible personal property tax as evidences of debt under Section 704 of the Revenue Act at the rate of fifty cents per one hundred dollars of the fair market value thereof."

This regulation was issued by the Commissioner under authority contained in Section 931 of the Revenue Act, which provides that the Commissioner may, from time to time, make such rules and regulations not inconsistent with the Revenue Act, as may be needful to enforce its provisions. Mr. Parsley's contention is that the above quoted regulation, in so far as it classifies a cashier's check as an evidence of debt, is "inconsistent" with the Revenue Act and is, therefore, invalid.

It is my opinion that the Commissioner was correct in classifying a cashier's check as an evidence of debt. It does not represent funds on deposit in the name of the holder but rather it is an acknowledgment of an indebtedness on the part of the bank to the payee. 7 Am. Jur. 525. In Zollman Banks and Banking, Section 4691, a cashier's check is defined as follows:

"A cashier's check is a bill of exchange drawn by a bank on itself and accepted by the act of issuance. It is in no sense a check as that term is ordinarily used. It is not drawn by a depositor against a deposit, but is simply an acknowledgment by the bank to the payee. . . . It is a primary obligation of the bank."

The Court in its decision in *In Re Liquidation of State Bank of Binghamton*, 274 N. Y. S. 41, comments on the nature of a cashier's check as follows:

"A 'cashier's check' so called, differs radically from an 'ordinary check.' The latter is an order upon a bank purporting to be drawn upon a deposit. It is an order on a specific deposit balance. Not so a cashier's check. It is merely an evidence of acknowledgment of an indebtedness with an agreement to pay on demand."

Further, in *Louisville and Nashville R. R. Co. v. Federal Reserve Bank*, 157 Tenn. 497, the Court states:

"A cashier's check is not an assignment of a fund, but only an evidence of indebtedness on the part of the bank."

I therefore conclude that the Commissioner's assessment made at the rate of fifty cents on every one hundred dollar valuation of said cashier's check is justified under the statute and the rules and regulations issued pursuant to authority granted in Section 931 of the Revenue Act.

INCOME TAX; MARRIED WOMEN; SEPARATE INCOME; DUTY TO FILE RETURNS

11 December, 1943.

You have referred to me your correspondence with Mrs. George E. Golding with reference to her liability for filing income tax returns for the years 1940 and 1941. I understand that the taxpayer received at least \$1,976.00 as income during 1940 and at least \$2,120.00 as income during 1941. You requested the taxpayer to file income tax returns for the two years in question but she has taken the position that the Revenue Act does not require a married woman to file an income tax return unless her net income is \$2,000.00 or more. You request my opinion upon the soundness of the taxpayer's contention.

Taxpayer relies upon Section 326 of the Revenue Act of 1939, prior to the 1942 amendment, which provides in part as follows:

"Every resident or nonresident . . . having a net income for the income year of two thousand dollars (\$2,000.00) or over, if married and living with husband or wife, . . . shall make a return under oath, stating specifically the items of gross income and the deductions allowed by this article. . . ."

The quoted provision has been embodied in the Revenue Acts of this State at least as far back as the Revenue Act of 1923. While in terms it seems to support taxpayer's position, it has, so far as I know, never received the construction contended for by the taxpayer in view of other provisions of the Revenue Acts. As pointed out in a prior letter to you, the provision was obviously an inadvertence and it was corrected by a 1943 amendment to the Revenue Act which clarified the legislative intent.

In view of the provision contained in Section 324(1)(c), that a married woman having a separate and independent income is entitled to an exemption of \$1,000.00, taxpayer's construction of the Act would lead to an obviously unsound conclusion. The Act defines net income to mean gross income less allowable deductions. Thus, if the net income of a taxpayer was \$2,000.00, all deductions would have been taken in reaching this figure and there would then remain to be deducted only the personal exemption of the taxpayer. Since Section 324(1)(c) provides that this exemption is \$1,000.00, there would remain after deducting this exemption from the net income of \$2,000.00, \$1,000.00 of taxable income. However, under taxpayer's construction she would not have to make a return even though she had this \$1,000.00 of taxable income. Such a result is incongruous, since its result would be to exempt the income of married women to the amount of \$2,000.00, whereas, Section 324(c) expressly provides otherwise and the Act has been consistently construed for a period of at least twenty years to require that a married woman having a separate income must file a return if her net income is \$1,000.00 or over.

I have previously referred to the rule of construction that the consistent administrative interpretation is given weight by the Courts and I advise that you adhere to this construction.

FRANCHISE TAX; FORMULA FOR APPORTIONMENT OF BUSINESS OF
FOREIGN CORPORATION ENGAGED IN THE BUSINESS OF
SELLING AND INSTALLING ELEVATORS

14 December, 1943.

The Otis Elevator Company, a foreign corporation doing business in North Carolina, has protested the assessment by the Commissioner of Revenue of additional franchise tax against it for the years 1939, 1940, 1941, and 1942. You request my opinion as to whether the additional assessment can be sustained.

The taxpayer's chief business in North Carolina is the sale and installation of elevators. Orders for elevators are secured by taxpayer's sales offices in North Carolina and elsewhere and forwarded to its works in New York and New Jersey where the various parts are manufactured. The parts are then shipped to the place of installation and are then assembled and installed in the building by the local construction organization of the taxpayer. The installation process consists of a great amount of skilled work including the cutting, fitting, and assembling of the parts, after which the completed elevator, ready for operation is delivered to the customer.

The Commissioner of Revenue contends that the principal business of the taxpayer is contracting and that its franchise tax should be computed in accordance with Section 210, Subsection (c), of the Revenue Act, as amended, which applies to all corporations not included in Subsections (A) or (B), and which provides that the total amount of capital stock, surplus and undivided profits of a foreign corporation doing business in this State shall be apportioned to North Carolina on the basis of the ratio of its gross receipts in this State to its gross receipts within and without the State. The use of this formula in determining the amount of tax due by the subject taxpayer results in the additional assessments for the years mentioned above.

The Otis Elevator Company takes exception to this method of computing its franchise tax and contends that the correct formula for apportioning its business to North Carolina is the one expressed in Section 210(A), which applies to corporations engaged principally in the business of manufacturing, collecting, buying, assembling, or processing goods and materials in this State.

I am unable to agree that either of these two formulas are applicable. From the facts presented, it is apparent that the Otis Elevator Company is primarily engaged in the business of selling or dealing in tangible personal property and is therefore governed by the apportionment formula prescribed in Subsection (B) of Section 210.

Sales offices are maintained in the State and salesmen are employed to solicit orders, execute contracts of sale, deliver the property and make collections therefor. The installation and assembling processes are only incidental to the sale, and the fact that they are of necessity done at the place of delivery does not, in my opinion, alter the fact that the principal business engaged in is selling. The customers buy the completed elevator for a fixed price, which includes all costs of manufacture, assembling and installation.

I, therefore, conclude that the Commissioner of Revenue should compute the franchise tax due by the Otis Elevator Company in accordance with the method outlined in Subsection (b) of Section 210 of the Revenue Act.

KRAFT CHEESE COMPANY; INCOME TAXATION; DISALLOWANCE OF
INTEREST PAID BY SUBSIDIARY TO CLIENT

13 December, 1943.

I regret that I have been greatly delayed in informing you of my opinion upon the income tax question raised by the Kraft Cheese Company and referred to in the correspondence which you have handed me.

The Kraft Cheese Company (hereinafter referred to as the "taxpayer"), is a Delaware corporation with its principal place of business in Illinois and is duly licensed to do business in North Carolina. Taxpayer is a wholly owned subsidiary of the National Dairy Products Corporation. Taxpayer was organized to acquire the assets and operate the business of Kraft-Phenix Cheese Corporation, an Illinois corporation.

The National Dairy Products Corporation purchased the business and assets of Kraft-Phenix Cheese Corporation and had paid the stockholders of that corporation in common stock (666,287 shares), gold debentures (5¼ per cent, principal amount \$33,264,500.00), and cash (\$6,182,000.00.)

Taxpayer was organized with a capital stock of \$2,000,000.00, and subsequently issued to National Dairy Products Corporation its debentures due February 1, 1948, in the principal amount of \$30,000,000.00. These debentures carried an interest rate of 6 per cent which was reduced on January 1, 1941, to 4 per cent.

In filing its income tax returns for 1938, 1939 and 1940 taxpayer deducted interest paid to National Dairy Products Corporation on its debentures held by that corporation. The Commissioner of Revenue disallowed the interest thus claimed upon the asserted authority of Section 318½ of the Revenue Acts of 1937 and 1939. The taxpayer paid the additional tax assessed under protest and the question now presented is whether in my opinion the Commissioner's position is sound.

Taxpayer's contention is that its debt to its parent corporation resulted from a reorganization under which the parent corporation was substituted for other creditors of the taxpayer and that the existence of the debt is not attributable to the fact that the taxpayer is a subsidiary. In elaboration of this position taxpayer asserts:

"The sole reason that the debentures of Kraft Cheese Company were not issued directly to the public, rather than to the National Dairy Products Corporation, was that prior debentures issued by National Dairy to the public prohibited the issuance of any funded indebtedness by any of its subsidiaries. In other words, all funded debts must go by public issuance through the hands of the holding company, National Dairy Products Corporation."

The provision relied on by the Commissioner in support of his assessment of additional tax is that portion of Section 318½ which reads as follows:

"If the capital of a corporation which is a subsidiary of another corporation or closely affiliated therewith by stock ownership is inadequate for its business needs apart from credit extended or indebtedness guaranteed by the parent or affiliated corporation,

the commissioner shall, in determining the net income of such corporation, disregard its indebtedness owed to or guaranteed by the parent or an affiliated corporation in determining the net income taxable under this article."

It seems clear that the indebtedness owed by taxpayer to its parent is the type of indebtedness which is referred to in the quoted provision. Taxpayer contends that since Section 318½ eliminates all payments to a parent corporation by a subsidiary in excess of fair and reasonable value, the National Dairy Products Corporation would be justified in charging taxpayer substantial annual charges for management and operating supervision and that the interest in question corresponds to such fair and reasonable charges. I am unable to agree with this contention in view of the fact that Section 318½ deals expressly with loans between a parent and subsidiary in the language quoted above. It is a well established rule of statutory construction that the specific controls over the general. If the parent corporation should charge taxpayer for management and supervision, the validity of such charges could be determined in the year in which they were made. In my opinion, if the interest is disallowable under the quoted portion of Section 318½, it would not become allowable merely on the theory that the parent could charge the taxpayer with management and supervision costs which would approximate the interest.

Taxpayer borrowed \$30,000,000.00 from its parent for the purpose of acquiring certain business assets. The capital of taxpayer was apparently inadequate to acquire these assets without making this loan. The statute was intended to prevent a parent corporation from investing its capital in a subsidiary's business through the form of a loan, obtaining all the advantages from the use of the expanded capital of the subsidiary, and the added tax advantage to the subsidiary of the deduction of interest paid. Unless the wording of the statute is to be completely ignored, the Commissioner must disallow the interest involved. The wisdom or policy of the statute is a question for the Legislature; and that body having spoken, the Commissioner is required to follow the act.

In my opinion the assessment is valid and the claim for refund should be denied.

FRANCHISE TAXES; CAROLINA HOUSING AND MORTGAGE CORPORATION

16 December, 1943.

You have requested my opinion upon the following matter.

The taxpayer, Carolina Housing and Mortgage Corporation, is a domestic corporation engaged in the business of making loans upon real estate securities, selling the notes and mortgages thus taken, and servicing the collection of such notes and mortgages for the purchasers. In filing its franchise tax returns for the years 1942 and 1943 the taxpayer listed among its assets the items of "cash in escrow" and included the same amount among its liabilities as "deposits from borrowers in escrow." The Commissioner assessed additional franchise tax based upon these deposits. The taxpayer objects to these assessments for the reasons hereinafter stated.

In the course of business, the taxpayer makes loans insured by the Federal Housing Administration. The loans are evidenced by notes made payable to taxpayer and insured by the Federal Housing Administration and secured by a deed of trust upon real estate. After the loan has been made, taxpayer sells the note and mortgage but agrees with the purchaser to continue to "service" the loan, which means that it will continue to collect the amounts due, and correctly account for and apply said amounts. By provisions in the deed of trust the borrower agrees that in addition to payments of principal and interest his payments to taxpayer will include the proper portion of insurance premiums, ground rents, taxes and special assessments. When a payment is received by taxpayer from a borrower, the sum thus collected for taxes, insurance, etc., is placed by taxpayer in a separate bank account entitled "escrow funds" and it is this account which is the basis for the assessments in question.

Taxpayer contends that the assessments cannot be sustained because the bank account referred to is not a part of the assets of taxpayer but is actually and constructively the property of the holders of the notes and mortgages for whom taxpayer is acting as servicing agent. You desire my opinion upon whether this contention is sound.

The franchise tax is based upon "total capital stock, surplus and undivided profits as set out in subsection three of this section, *which amount so determined shall in no case be less than the total assessed value (including total gross valuation returned for taxation of intangible personal property) of all the real and personal property in this State of each such corporation.* . . ." Section 210(4) of the Revenue Act. This provision bases the tax upon property of the corporation. If the property is not that of the corporation, it may not be included in the tax base. The position taken by the Commissioner of Revenue is that since the taxpayer paid intangible taxes on the bank account, the portion included within parenthesis of the provision quoted above controls and justifies the assessment.

Taxpayer enters into different forms of servicing agreements with the purchases of its notes and mortgages. However, it states that "the purport of all of them is similar as far as the question is involved in which we are interested." Taxpayer has submitted two of such agreements for examination. In the first of these the pertinent provisions are as follows:

"C. 2. Seller, at its own expense and without cost or charge to Purchaser (except as hereinafter provided), will maintain facilities for the collection of, and use its best efforts to collect promptly for Purchaser, all sums payable by the mortgagor under the provisions of the aforesaid note or bond and Mortgage. Seller will remit to Purchaser, within 24 hours after the receipt thereof, principal and interest collected by it from the mortgagor, less such interest payments as are applicable to the period prior to the first day of the months preceding the date on which the first full installment payment of principal and interest is due, and less the additional deductions referred to in paragraph 3 of section D hereof, such remittances to be in cash or immediately available funds, and to be accompanied by written advice of the date on which payments thereof were made by the mortgagor. Upon

making such remittances, Seller will be under no further obligation with respect to the application of the principal and interest so remitted to Purchaser. Seller will also use due diligence to prevent any lien superior to the lien of Mortgage, attaching to the mortgaged property, and in the event Seller receives notice that any such lien has been claimed, Seller will promptly notify Purchaser thereof. Nothing herein contained shall be so construed as to require Seller to institute on behalf of Purchaser foreclosure or other legal proceeding to enforce collection of the note or bond, or to require Seller to bear any part of the expense of any such foreclosure or legal proceeding.

"3. Seller will keep complete and accurate account of and properly apply all sums paid to it by the mortgagor for—

- a. FHA Insurance premiums;
- b. Taxes, assessments, and ground rents; and
- c. Premiums accruing on policies of fire and other hazard insurance.

All sums so collected by Seller will be segregated by it from its general assets and held in trust in a special account deposited in a bank, the deposits of which are insured by the Federal Deposit Insurance Corporation. Seller alone assumes full responsibility for the proper application of all such funds.

"4. Seller (irrespective of whether or not the mortgagor has deposited funds with Seller to make such payments) will pay, on or before the due date thereof, the annual FHA Insurance premium, all taxes, assessments, and ground rents levied or assessed against the mortgaged property, and all premiums on policies of fire and other hazard insurance covering the mortgaged property, and will promptly furnish to Purchaser written evidence of such payments.

"5. Seller will render to Purchaser on the first day of each July after the date hereof and at such other times as Purchaser may require, a complete accounting of all funds received and disbursed by it in accordance with the provisions hereof and the regulations of FHA."

This agreement also provides that the purchaser "will reimburse the seller, within 30 days after the receipt of written evidence of such payment, for any sum paid by Seller, over and above the amount paid by the mortgagor to seller, for the purposes outlined in Paragraph 4 of Section C."

In the second servicing agreement the applicable provision is as follows:

"3. The Servicing Agent will pay monthly to the Berkshire all funds previously received (and not so paid over) by it from the mortgagor which are applicable to the payment of principal and interest (less servicing fee hereinafter mentioned) on the Mortgage, on or before the 20th day of the month and in a separate trust account, as trustee for the Berkshire. These remittances of principal and interest are to be on forms satisfactory to the Berkshire. The Servicing Agent will also hold in trust, in a separate trust account, as trustee for the Berkshire, all other funds received from the mortgagor, until applied in accordance with the terms of the Mortgage, the contract of insurance with the Federal Housing Administrator and the terms hereof. Upon any subsequent assignment of the Mortgage, the assignor shall mail written notice thereof to the Servicing Agent, giving the name and address of the assignee. Until the Servicing Agent receives such written notice, such assignor shall be presumed to continue to be the owner of the Mortgage, and the Servicing Agent will be fully protected in continuing to make payments of principal and interest so such owner of the Mortgage."

The reason why taxpayer places these funds in the "escrow account" is that it is required to make this segregation by the Federal Housing Administration. It seems clear that the legal title to these funds is in taxpayer and not in the holders of the notes. No provision is made for the transfer of title of these funds to the holders of the notes. The first agreement provides that the sums collected will be segregated from taxpayer's general assets and held in trust in a special account. The second agreement provides that taxpayer will hold the funds in a separate account as trustee. A trustee holds legal title to the property held in trust although the equitable ownership may be in another. The question then arises whether the mere fact that taxpayer holds the legal title to the funds is sufficient to render them taxable.

Taxpayer contends that since the funds are segregated from its general assets it cannot use them as operating capital and that the franchise tax was intended to be based only upon assets free to be used in its business.

Are the funds in question the "property . . . of" the corporation? In *Stedman v. Winston-Salem*, 204 N. C., at page 204, the Court defined the word "property" as follows:

"The defendant asserts that the statute is unconstitutional because it invades or violates Article V, Section 5, of the Constitution. The pertinent portion of this provision is that: 'property belonging to the State or to municipal corporations shall be exempt from taxation.' The word 'property' has been defined by this Court as 'rightful dominion over external objects; ownership; the unrestricted and exclusive right to a thing in every legal way, to possess it, to use it and to exclude every one else from interfering with it. Property is the highest right a man can have to anything, being used for that right which one has to lands or tenements, goods or chattels, which no way depends on another man's courtesy. A right imparting to the owner a power of indefinite user, capable of being transmitted to universal successors by way of descent and imparting to the owner the right of disposition.' *Vann v. Edwards*, 135 N. C. 661, 47 S. E. 784. Thus, it would appear that property is a right to exclusive dominion and unrestricted user, within the law."

In view of the fact that taxpayer may not freely dispose of these funds but is so restricted in its disposition of them that they can be used for one purpose only, it would seem that such funds are not the "property" of the corporation within the meaning of the definition quoted above. There is clearly a marked distinction between these funds and the general operating capital of the corporation; and it is my opinion that the restricted use to which these funds may be put removes them from the "property" of the corporation which the statute intended to constitute the tax base.

I, therefore, advise that your assessment based upon these deposits should be withdrawn. The conclusion herein reached will be followed only where the servicing agreements between taxpayer and the various purchasers contained provisions similar to those quoted in this opinion.

FRANCHISE TAX; LIABILITY OF FOREIGN CORPORATION CARRYING ON
DREDGING OPERATIONS IN THE FEDERAL INTRACOASTAL
INLAND WATERWAY

17 December, 1943.

You inquire whether the Norfolk Dredging Company, a Virginia corporation, is liable to the State of North Carolina for the payment of franchise tax as the result of its dredging operations in that part of the Federal Intracoastal Inland Waterway which passes through this State.

It appears that the Norfolk Dredging Company owns no property in North Carolina and that it maintains no place of business here. The dredging operations are carried out under contract with the United States Government and are confined to the Inland Waterway proper.

The land used in constructing the waterway was granted to the United States under authority of certain acts of the General Assembly. (1913, c. 197; 1927, c. 44; 1929, c. 4; 1931, c. 2; 1937, c. 445.) These acts stipulate that the Secretary of State is "authorized to issue to the United States of America a grant to the land located within said inland waterway. . . ." They further provide that if the title to any part of the lands required by the Federal Government for the construction of the waterway be in any private person, public or private corporation, or in any particular subdivision of the State, then the Transportation Advisory Commission shall acquire same by purchase, donation, or condemnation, and the Secretary of State "shall effect a grant to the United States of America to the land thus condemned."

I am informed that pursuant to the authority contained in these acts, the Transportation Advisory Commission ceded to the Federal Government a perpetual right-of-way or easement in the lands used for constructing the waterway. There was no outright grant of fee simple title to any of the lands except that portion which lies between the Cape Fear River and the southern end of Masonboro Sound, which latter area covers a distance of between four and five miles. Fee simple title was accepted by the Federal Government for this area for the reason that it was necessary to erect a bridge and excavate extensively.

The franchise tax levied in Article III, Schedule C, of the Revenue Act is a tax on the privilege of engaging in or doing business in North Carolina. *Stagg v. Nixon*, 208 N. C. 285.

Unless the activities which are the subject of the tax are carried on within the territorial limits of North Carolina, the State has no jurisdiction to impose the tax. *Hans Rees' Sons v. North Carolina*, 283 U. S. 123; *Surplus Trading Co. v. Cook*, 281 U. S. 647. Also, a State is without authority to impose a tax within an area over which, though it lies within the boundaries of a State, the Federal Government has assumed exclusive legislative jurisdiction. *Surplus Trading Co. v. Cook*, *supra*. It is therefore necessary to inquire whether the State of North Carolina ceded to the United States jurisdiction within

the area embraced in the inland waterway to the extent that she is prevented from exercising the right to impose taxes.

Two cases decided in the Supreme Court of the United States are helpful on this point. In *Gromer v. Standard Dredging Co.*, 224 U. S. 362, it was held that the Island of Porto Rico had jurisdiction to impose taxes upon a dredging company operating, under contract with the Federal Government, exclusively within certain harbor areas and navigable waters within the territorial limits of Porto Rico which were reserved for the use of the United States. The Court took the position that the mere reservation and use of the property by the United States did not exempt it from taxation by the Island of Porto Rico, so long as there was no interference with the function exercised by the Federal Government. In *Silas Mason Co. v. Tax Commissioner of Washington*, 302 U. S. 186, the question for decision was whether the State of Washington had authority to enforce its occupation tax as applied to the gross income received by appellants under contracts with the United States for work performed in connection with the building of the Grand Coulee Dam on the Columbia River, over which site the United States had acquired title. In the opinion, the Court says the question was "whether the United States has acquired exclusive legislative authority so as to debar the State from exercising any legislative authority including its taxing and police power in relation to the property and activities of individuals and corporations within the territory. In deciding the question the Court states: "The acquisition of title by the United States is not sufficient to effect that exclusion. It must appear that the State by consent or cession, has transferred to the United States that residuum of jurisdiction which otherwise it would be free to exercise."

Since the United States acquired only a right-of-way or easement in the lands covered by the inland waterway as it passes through this State, with the above noted exception as to the Masonboro Sound area, and since the State of North Carolina did not specifically relinquish exclusive jurisdiction therein, it is my opinion that the State has retained the right to impose taxes within the area so long as such imposition does not interfere with a Federal function.

The franchise tax which the Commissioner of Revenue proposes to levy upon the Norfolk Dredging Company is not a tax upon the Federal Government, its property, or its officers; nor is it a tax upon the contract of the government. The corporation is an independent contractor engaged in private business for profit and is therefore not entitled to the Federal Government's immunity from State taxation. In *James v. Dravo Contracting Co.*, 302 U. S. 134, the Court declared valid a West Virginia tax laid upon the gross receipts derived from activities within the State of an independent contractor working under contract with the Federal Government on the ground that it did not constitute a direct burden upon the operations of the United States. See also *Atkinson v. State Tax Commission of Washington*, 303 U. S. 20; *James Stewart and Co. v. Sandrakula*, 309 U. S. 94; *Metcalf v. Mitchell*, 269 U. S. 514.

I therefore conclude that the Norfolk Dredging Company is liable.

SALES TAX; EXEMPTION OF PURCHASES AND SALES MADE BY Y.M.C.A.
OF RALEIGH, NORTH CAROLINA

17 December, 1943.

You inquire whether the Young Men's Christian Association of Raleigh, N. C., is exempt from liability for the payment of the 3 per cent retail sales tax imposed in Article V, Schedule E, of the Revenue Act of 1939, as amended, on purchases made by said association.

An examination of the certificate of incorporation and the by-laws of the association reveals that it is organized to develop the Christian character and usefulness of its members, and to improve the spiritual, physical, mental, and social condition of young men and boys. The association has no capital stock, and it is a non-profit organization.

Section 406 of the Revenue Act provides that the 3 per cent retail sales tax shall not apply to "sales of tangible personal property to hospitals not operated for profit, churches, orphanages, and other charitable or religious institutions or organizations not operated for profit, and educational institutions principally supported by the State of North Carolina, when such tangible personal property is purchased for use in carrying on the work of such institutions or organizations."

It is my opinion that this association falls within the category of "charitable or religious institutions or organizations not operated for profit" set forth in the above quoted exemption. I therefore conclude that it is not liable for the payment of the sales tax on purchases made by it, provided the property purchased is used exclusively in carrying on the work for which the association was organized.

You also raise the question whether the association must collect the retail sales tax on sales made by it at small business enterprises such as soft drink, tobacco, and candy stands, the profits from which are used in the furtherance of its program of work.

There is no exemption in the statute in favor of non profit, charitable and religious organizations engaging in the business of selling tangible personal property at retail. They are selling in competition with other merchants and are required under the law to collect and remit the sales tax to the State. Therefore, if the Raleigh Young Men's Christian Association is engaged in such selling operations, I am of the opinion that it must procure a merchant's certificate of registration and collect and remit the sales tax to the State.

INHERITANCE TAXATION; EFFECT OF DEVISE OF PERSONAL PROPERTY
WITH POWER OF DISPOSITION AND DIRECTION CONCERNING
ANY PROPERTY NOT DISPOSED OF

10 January, 1944.

You have requested my opinion upon the following question, arising in connection with the estate of Edward P. Thompson.

Mr. Thompson's wife, a resident of New Jersey, executed a will in 1898 in New Jersey. In this will she devised and bequeathed to her husband all of her real and personal property to use and dispose of as he wished, except that he had no power to dispose of it by will.

The will further stipulated that if any of such property should remain undisposed of at his death, it would go to Mrs. Thompson's heirs. One-half of the estate actually was undisposed of at Mr. Thompson's death, and in his will he directed that it should go to his wife's heirs in accordance with her wishes as expressed in her last will and testament. At the time of his death, Mr. Thompson was a resident of North Carolina. Mrs. Thompson's heirs were nonresidents of North Carolina.

Upon these facts, the question has arisen whether North Carolina can impose an inheritance tax upon the personal property which passed to Mrs. Thompson's heirs at Mr. Thompson's death. It is immediately apparent that if the latter obtained an absolute estate under his wife's will, the property passed at his death as a transfer from him, a resident of this State, and is therefore taxable in North Carolina. If, on the other hand, he acquired only a life estate with power of disposition, the surplus which remained passed under the will of his wife, who was a nonresident, and does not constitute a transfer subject to North Carolina's taxing jurisdiction.

The question turns on the construction of Mrs. Thompson's will. It is well established that the situs of intangible personal property (where, as here, there is no question of business situs) is deemed to be at the residence of the owner thereof. Since Mrs. Thompson was a resident of New Jersey, and the will was made and probated in that State, it is necessary to construe the will in accordance with the laws of that jurisdiction to determine the nature of the estate passing to Mr. Thompson under his wife's testamentary disposition.

Under the common law rule, where the first taker was given an absolute power to dispose of the property, the devise over of the residue was considered ineffectual, by reason of the fact that the first taker had been given a power which was absolute and unrestricted; but where the power given the first taker was to be exercised only for specified purposes, or in certain circumstances, e.g., for his support, or during his life time, then the limitation over was not void as repugnant to the initial gift. *In re Whitings Estate*, 268 N. Y. S. 251.

The State of New Jersey follows this rule substantially. The Court in *Trafton v. Bainbridge*, 125 N. J. Eq. 474 (1939) quoting from *Wooster v. Cooper*, 53 N. J. Eq. 682, summarizes the law of that jurisdiction in the following words:

"The rule that a devise of an estate generally, with a power to dispose of the same absolutely and without limitation, imports such dominion over the property that an estate in fee is created, and that a devise over is consequently void, has one exception, which is this: that where the testator gives an estate for life only, by certain and express words, and annexes to it a power of disposal, the devisee for life will not take an estate in fee.

"This exception was recognized and enforced in the case of *Downey v. Borden*, 36 N.J.L. 460, and again in the case of *Pratt v. Douglas*, 36 N. J. Eq. 516, 533; and in the latter case it was declared to apply to bequests of personal estate as well as to devises of realty. These cases have definitely settled the law on this subject in New Jersey, and the propriety of the rule laid down in them is no longer open to discussion."

The Downey case, *supra*, states the rule even more clearly as follows:

"The distinction is between a devise expressly for life with a power of disposition annexed, and a devise in general terms with such a power annexed. In the former case, an estate for life only passes, in the latter a fee. As a rule of construction, the principle is entirely settled, that where lands are devised in the first instance in language indeterminate as to the quantity of the estate from which an estate for life would result from implication, and words adapted to the creation of a power of disposal without restriction as to the mode of execution are added, the construction will be, that an estate in fee is given; but where the quantity of the estate of the taker is expressly defined to be for life, the superadded words will be construed to be the mere gift of a power of disposition."

To the same effect are the decisions of the Court in *Annin v. Vandoren*, 14 N. J. Eq. 135; *McClellan v. Archer*, 45 N. J. Eq. 17; *Bennett v. Association*, 79 N. J. Eq. 76; *Gaston v. Ford*, 99 N. J. Eq. 592; *Teurk v. Schueler*, 71 N. J. L. 331; *Hyde v. Hyde*, 88 N. J. Eq. 358.

It is noted that under this rule, in order for the first taker to acquire an estate in fee, the power to dispose of the property must be absolute and without limitation. In her will, Mrs. Thompson granted the power of disposition to her husband in these words: "... and that the same shall be absolutely the property of my said husband, his heirs and assigns forever, so far as he may in any manner in his lifetime expend, consume, or dispose of the same except by his will and testament. . . ." The question arises whether this grant is sufficiently unrestricted and absolute so as to bring this case within the fee rule laid down in *Wooster v. Cooper*, and *Downey v. Borden*, *supra*.

Clearly, the above quoted words in the will give to Mr. Thompson the unqualified right to dispose of the property by every means except a testamentary disposition. Does, then, the restriction on the right to will it make this a limited power of disposal? Cases on the point indicate that it does not. In *Gaston v. Ford*, 99 N. J. Eq. 592, 133 A. 531, the following language appears:

"Another argument advanced by defendants is that the power of disposal given is not an unlimited or unrestricted power; that the words 'to be at her own disposal while she lives' expressly limit her power of disposal by excluding disposal by will, since a will could not operate while she lived.

"Assuming that the power of testamentary disposition is not included in the language as used, nevertheless the power of absolute disposal during life is in itself such an unlimited and unrestricted power of absolute disposal as to come within the rule. This has been decided in a number of cases: In *Dutch Church v. Smock*, 1 N. J. Eq. 148, where the gift was to testator's wife, \$600, 'to be at her disposal during life'; in *Benz v. Fabian*, 54 N. J. Eq. 615, 35 A. 760, where the power was to the wife 'to use, occupy or dispose of' the property 'during her life' (the last three words not being expressed in the will, but clearly and necessarily implied by the subsequent clause providing for the gift over if the wife 'should continue in the use, occupation and ownership of the property until her death'); and again in *Hyde v. Hyde*, 88 N. J. Eq. 358, 102 A. 830, where the power given to the wife was to have 'the actual custody, control and disposal during her life'."

Applying these fixed principles of construction established by the New Jersey decisions to Mrs. Thompson's will, it is my opinion that Mr. Thompson acquired an absolute estate in the property of his wife, and at his death the property which remained undisposed of passed as a transfer from him. As pointed out above, this doctrine applies in New Jersey to estates in personalty as well as in realty. Since Mr. Thompson died seized and possessed of the property while a resident of North Carolina, the transfer is subject to the inheritance tax imposed in Article I, Schedule A, of the Revenue Act of 1939, as amended.

INCOME TAX; DEDUCTION OF CONTRIBUTIONS TO TRUSTS FOR THE
BENEFIT OF OFFICERS OF A CORPORATION

21 January, 1944.

You inquire whether the May McEwen Kaiser Company, a corporation doing business in this State, may, in computing its net taxable income, deduct sums contributed by it to a trust established for the benefit of two of its officers.

Under the trust agreement, the corporation agrees to contribute a certain per cent of its net profits to a trustee for the benefit of the two officers. The trustee has the right to hold, invest, and reinvest the trust funds in its discretion. The officers derive no benefit from the trust fund until they reach the age of sixty years, at which time the proceeds are paid to them under a specified plan. No part of the trust estate or any income therefrom at any time reverts to, or inures to the benefit of, the corporation. It is contended by the corporation, and the trust agreement so states, that the trust agreement is a part of a new employment contract entered into by the corporation and its officers; and that it is necessary to compensate such officers, who are key men in the organization, in the manner provided in order to retain their services.

Section 322 of the Revenue Act provides that in computing the net taxable income of a corporation, there may be deducted "all the ordinary and necessary expenses paid during the income year in carrying on any trade or business, . . ."

I have been unable to find any decision of the North Carolina Supreme Court or any opinion of this office which throws any light upon the question involved. It is, therefore, necessary to attempt to answer the question by reference to the statute and to any analogy that may be found in the Federal authorities.

This provision is generally similar but not identical with the provision of the Federal law which is found in Section 23(a) of the Internal Revenue Code, which is as follows:

"In computing net income there shall be allowed as deductions . . . all the ordinary and necessary expenses paid or incurred during the taxable year in carrying on any trade or business, including a reasonable allowance for salaries or other compensation for personal services actually rendered. . . ."

It is my opinion that, under the wording of this statute and the Federal authorities which may be referred to by analogy, the amount

contributed by the corporation to the trust fund, in so far as it, when added to the salaries paid, represents reasonable compensation deducted as a necessary and ordinary business expense. See *Lord v. Commissioner*, 1 T. C. 286. The question whether the compensation is reasonable is an administrative question to be determined by a consideration of the nature of the business, the duties and responsibilities of the officers and employees involved, and all other relevant factors.

JOHN A. TUCKER; LICENSE TAX

11 February, 1944.

Mr. John A. Tucker has requested you to give him a refund of privilege tax which allegedly was paid under the following circumstances and you request my opinion upon whether you may legally make this refund, if you find that the payment was made.

Mr. Tucker, in the period from 1935 to 1942, was a patient in the State Hospital with the exception of about five months. He was released from the State Hospital on or about October 5, 1936, and returned home. An uncle of Mr. Tucker paid to the Commissioner of Revenue the license tax levied by the Revenue Act for the privilege of engaging in the practice of law for the license year 1936-1937. However, Mr. Tucker returned to the Hospital on April 1, 1937, and during the interval between October 1936 and April 1937 he did not engage in the practice of law.

It does not appear whether the license tax was paid by funds belonging to Mr. Tucker and, therefore, whether he has the right to claim a refund of such taxes. He does state that the tax was paid without his consent or authority and I assume that it was paid by the uncle from his own funds and as a matter of accommodation. Further, under the circumstances, I assume that the tax was paid voluntarily and not under protest.

In his application for a refund Mr. Tucker states: "I am asking that in view of this mental incapacity the Revenue Department give me a rebate on these taxes paid by E. J. Tucker, my Uncle." If the payment had been made by Mr. John A. Tucker, and he wished to assert mental incapacity as a ground which would prevent the running of the statute of limitations, it might be possible for you to find that the statute had not run. However, Mr. John A. Tucker could not plead his incapacity with respect to a payment of someone else's funds which he did not make. Further, the fact that he did not practice or avail himself of the privilege authorized by the license does not of itself furnish a ground for refund if claim for refund is barred by the statute of limitation.

I know of no way in which the money can legally be refunded to Mr. Tucker unless the following could be shown:

(a) That the payment was made with funds belonging to Mr. Tucker; and

(b) that Mr. Tucker at the time of the payment was under a mental incapacity which would stop the running of the statute of limitation.

INHERITANCE TAXATION; NO LIABILITY FOR INCOME TAXES ON DEFERRED
PAYMENT OF ASSET TAXED FOR INHERITANCE TAX PURPOSES

14 February, 1944.

You have referred to me the inheritance tax files for the estates of William Graves and William M. Hendren with the request that I advise you upon a question arising therein. In each of these cases the decedent had been a lawyer who at the time of his death was entitled to receive a substantial fee for legal services. The fees were estimated by the personal representative in each case to be of the value of \$150,000.00 when the inheritance tax inventories were filed. However, only a portion of such fees have been received by the respective estates. The question has arisen whether if a valuation is placed upon said fees at this time for inheritance tax purposes and, when said fees have finally been paid in full, it appears that the estates have received more than the value used for inheritance tax purposes, said additional compensation would be taxable for income tax purposes.

Section 317(2) of the Revenue Act provides in part as follows:

"2. The words 'gross income' do not include the following items, which shall be exempt from taxation under this Article, but shall be reported in such form and manner as may be prescribed by the Commissioner of Revenue:

* * * * *

"(c) The value of property acquired by gift, bequest, devise or descent (but the income from such property shall be included in gross income). . . ."

In view of this provision, it is my opinion that when a valuation has been placed upon said fees for inheritance tax purposes, any amount later received upon these fees over and above said valuation is not taxable for income tax purposes. The Revenue Act contemplates that the assets shall be taxed for inheritance tax purposes and when this is done no part of the asset may be taxed for income tax purposes.

INHERITANCE AND GIFT TAXATION OF TRANSFERS OF WAR BONDS

15 February, 1944.

Several questions have arisen regarding the inheritance and gift taxation of transfers of war bonds. You desire that I summarize my opinion regarding these matters.

(1) The regulations of the Treasury Department of the United States authorize the issuance of war bonds in the following forms as to individuals: (1) in the name of one person, for example, "John A. Jones"; (b) in the names of two (but not more than two) persons in the alternative as co-owners, for example, "John A. Jones or Mrs. Ella S. Jones"; and (c) in the name of one (but not more than one) person payable on death to one (but not more than one) other person, for example, "John A. Jones, payable on death to Mary E. Jones."

(2) Where the bonds are issued in the name of one individual and he dies, it is clear that the proceeds of the bonds are includable in his estate for purposes of inheritance taxation. There is no exemp-

tion on account of the fact that the bonds are obligations of the Federal Government. The tax is on the transfer, not upon the bonds themselves, and has repeatedly been held valid by the courts.

(3) Where the bonds are issued in the alternative to two persons as co-owners (as "John A. Jones or Mrs. Ella S. Jones"), and either co-owner dies prior to the death of the other co-owner, the accumulated value of the bonds is includible in the estate of the decedent in the proportion in which the decedent furnished the funds with which the bonds were purchased. By accumulated value, I mean the cost price plus the earned increment. The basis for this tax is found in Section 1(3) of the Revenue Act which taxes transfers intended to take effect in possession or enjoyment at or after death.

(4) Where the bonds are payable to "John A. Jones, payable on death to Mary E. Jones," and he dies before she dies, the accumulated value of the bonds is includible in his estate for inheritance tax purposes in the proportion in which the decedent furnished the funds with which the bonds were purchased. In such a case, in my opinion, the registration of the bond in this form would raise a presumption that John A. Jones had furnished the funds with which the bond was purchased, but this presumption might be overcome by clear evidence to the contrary.

(5) With respect to gift taxation, it is my opinion that where the bond is purchased by John A. Jones and is payable to "John A. Jones or Mrs. Mary S. Jones" no gift tax liability accrues unless John A. Jones, prior to his death, gratuitously allows Mrs. Mary S. Jones to redeem the bond and retain the proceeds as her separate property. If the bond is purchased by Mrs. Mary S. Jones and is made payable to "John A. Jones, payable on death to Mrs. Mary S. Jones," it is my opinion that a transfer has occurred which would render the proceeds subject to gift tax.

(6) Of course, many transfers of war bonds will escape both gift and inheritance taxation because of available deductions and exemptions against such taxes. The principles stated in this letter assume that the deductions and exemptions have been exhausted and that the proceeds thus are taxable.

(7) The question has also been asked whether a valid gift may be made of a war bond by merely transferring its possession from one person to another without changing its registration with the Treasury Department. In *In Re Owens' Estate*, 32 N.Y.S. (2d) 747, the court held that under the form of the bond and the regulation of the Treasury Department a war bond can never be made the subject of a voluntary transfer by way of gift or sale or pledge. The basis for this decision is that the bonds are issued, and their status controlled by, the regulations of the Treasury Department which specify that the bonds are not transferable and are payable only to the owner named thereon except in the case of his death or disability. Thus, the Court concludes that war bonds are not the subject of gift *inter vivos* or *causa mortis*, even though the usual requisites of a valid gift are present.

CHAIN STORE TAX ON PERSONS OPERATING LEASED DEPARTMENT

18 February, 1944.

Some misunderstanding has arisen regarding the opinion of this office of 30 September, 1943, relating to the liability of persons, firms or corporations operating leased departments in two or more stores for chain store tax under Section 162 of the Revenue Act.

The opinion referred to was given by this office without knowledge that the Commissioner of Revenue had theretofore issued rulings to one or more taxpayers upon this subject. I have reconsidered the opinion referred to but find no reason to change the views expressed therein. However, I suggest to you that as an administrative official it would be highly inequitable and unfair to apply this ruling retroactively, especially where taxpayers had received other views from the Commissioner of Revenue.

The other views that had been expressed by the Commissioner and which were quoted in at least one of the leading tax services were, as I understand them, that if a person, firm or corporation operates leased departments in two or more stores which are themselves chain store units and which are paying the chain store tax, then there would be no addition tax upon the lessee on account of operation of the leased departments. Since taxpayers had relied upon this view I suggest, not as a matter of law but as a matter of policy for your consideration, that this rule should be followed up until the opinion of 30 September, 1943, of this office.

If the lessees are operating leased departments so as to fall within the statutory provision that they control "by lease, . . . or by contract, the manner in which any such store or stores are operated, or the kinds, character, or brands of merchandise which are sold therein" it seems to me that they are liable for the tax. You will note that the opinion of 30 September, 1943, was based on facts under which the lessee completely controls the leased departments and the kinds of merchandise sold therein. It seems to me that in this situation the tax is clearly due. The lessee is an entirely different business entity from the owner of the stores in which the departments are leased and the fact that the owner of the stores pays chain store tax upon the operation of the stores does not, in my opinion, offer any ground for exemption for the operators of the leased departments who are operating, so to speak, a chain within a chain.

The language of the statute is explicit that the tax applies where there is control by lease of the merchandise which is sold and this seems to me to offer sufficient basis for the imposition of the tax.

As I understand it, even prior to the opinion of 30 September, 1943, the Commissioner of Revenue had consistently held that where the leased departments were operated in stores which were not chain store units the chain store tax was due on account of the operation of the departments. This is evidenced by correspondence which you have shown me. I think this view is sound if the lessee controls the kinds, character, or brands of merchandise.

INCOME TAX; NONRESIDENT EXECUTIVE RECEIVING SALARY FROM
NORTH CAROLINA CORPORATION

22 February, 1944.

You inquire whether a nonresident individual who receives a salary from a corporation doing business exclusively within North Carolina is liable for the payment of income tax on that salary to this State. You state that this individual does not come into the State more than three or four times a year, and that he never spends more than three or four hours here at any one time.

Section 310 of the Revenue Act of 1939, as amended, imposes a tax upon income earned within this State of "every nonresident having a business or agency in this state or income from property owned and from every business, trade, profession or occupation carried on in this state. . . ." It is clear that under this section income taxable in this State of a nonresident (whose only income from sources in this State consists of a salary for personal service rendered) includes compensation for personal services only to the extent that the services were rendered within the State of North Carolina.

The income tax law contains no rule for determining what proportion of a nonresident's salary paid by a North Carolina person or corporation is "earned within this State." It is therefore my opinion that the facts and circumstances in each individual case must control in the determination of such taxable portion. The time actually spent within the State by a nonresident salaried employee may or may not be a determining factor.

CHAIN STORE TAX; THE HAVERFIELD COMPANY

10 March, 1944.

You have referred to me the question whether in my opinion the above named taxpayer is liable for chain store tax under Section 162 of the Revenue Act on account of its activities hereinafter described.

Taxpayer is engaged in the business of placing millinery for sale in various stores and shops. Taxpayer manufactures and distributes the millinery which is sold and enters into agreements with the stores through which the millinery is sold for the designation of a space or department for the display and sale of the merchandise. Sales and advertising are made in the name of the store. Taxpayer pays the store a certain percentage of gross sales for providing the department space. The store pays salaries of employees in the department but receives from taxpayer sums equivalent to salaries paid "as an additional consideration." The store furnishes fixtures, light, heat, water, delivery service, and elevator and telephone service. Taxpayer reserves the right to remove any of the merchandise to which it has title at any time. Receipts of the millinery department are deposited by the store's cashier to the credit of taxpayer. Prior to the deposit the funds are kept separate and in trusts for taxpayer. In the case of charge sales, upon the approval by the store, they are immediately credited to the amounts owing taxpayer but, until actually remitted for, remain the property of taxpayer.

In investigating this matter taxpayer was asked certain questions. These questions and taxpayer's answers are as follows:

Q. Does taxpayer control merchandise sold in the leased department?

A. "We, of course do control the buying of all merchandise, and the merchandising in our departments except that we do follow the same general lines of merchandise as the stores in which we are located."

Q. In what manner does taxpayer control the method of operation?

A. "The operation of our department is controlled by us, except we follow the same general policy as the store."

Q. Does taxpayer pay the employees or have direction and control over leased department?

A. "The store in which we are located pays our employees at the same time and manner as their employees are paid. Our manager signs a voucher, however, and gives it to their bookkeeper designating the amount each employee is paid."

Q. Is any other merchandise sold in leased department?

A. "No items are sold in our department except such as are construed as millinery, except some departments sell a Rafield cleaner furnished by us, which is used for cleaning hats."

One of the activities upon which the privilege tax levied by Section 162 is imposed is that of a person, firm or corporation who or which "controls by lease, either as lessor or lessee, or by contract, the manner in which say such store or stores are operated, *or the kinds, character, or brands of merchandise which are sold therein, . . .*" (Underlining added.) Taxpayer's own admissions in this matter indicate that it does control the kinds, character, or brands of merchandise sold in the military departments and, as it operates through two or more of such departments, in my opinion it is liable for the tax under Section 162.

The adjustment of any misunderstanding on the part of the taxpayer with respect to prior rulings of your Department in this matter is an administrative problem with which this opinion is not concerned.

LIABILITY FOR BEVERAGE LICENSES OF NONRESIDENTS SHIPPING BEVERAGES INTO MILITARY RESERVATIONS IN NORTH CAROLINA

10 March, 1944.

You inquire whether in my opinion a nonresident manufacturer or bottler of beverages who shipped such beverages in interstate commerce to an Officer's Club located within a military reservation in North Carolina may be required to obtain privilege licenses imposed by Schedule F of the Revenue Act.

If such nonresident manufacturer or bottler does not ship any other beverages whatsoever into this State, except those shipped into a military reservation, it is my opinion that the privilege taxes may not be levied. The jurisdiction of this State to levy such licenses is based upon the exercise by such nonresident of a privilege within the territory in which the laws of the State of North Carolina are effective. If the shipment moves in interstate commerce from out of North Carolina into

a military reservation, over which the Federal Government has exclusive jurisdiction, the whole transaction is insulated from the operation of North Carolina laws and there is no jurisdictional basis for levying the privilege taxes.

SALES AND USE TAXES; COST-PLUS-A-FIXED-FEE CONTRACT WITH THE
FEDERAL GOVERNMENT; CONSOLIDATED VULTEE
AIRCRAFT CORPORATION

10 March, 1944.

You have referred to me certain correspondence with Mr. Marion L. Hicks, Chief of Contracts of the Consolidated Vultee Aircraft Corporation of Elizabeth City, N. C., with the request that I give you my opinion upon the following questions raised by Mr. Hicks.

This Corporation, hereinafter referred to as the taxpayer, operates under a cost-plus-a-fixed-fee contract with the Federal Government (Navy Department), which provides that the taxpayer shall furnish and deliver all supplies or services described in the contract. The services include the flight delivery, repair, alteration, and servicing of aircraft and the installation of equipment and fuel therein, the giving of training instruction, and the training of an organization necessary to carry out these functions. The materials to be furnished are such as are necessary to comply with such orders and instructions as may be issued by the Chief of the Bureau of Aeronautics in connection with the services referred to above. In consideration of these services and materials the Federal Government agrees to pay to taxpayer its costs plus a stipulated fee. The contract provides that "the title to all materials, parts, assemblies, sub-assemblies, supplies, equipment and other property for the cost of which the contractor is entitled to be reimbursed hereunder shall automatically pass to and vest in the government upon delivery to the contractor. . . ." The contract also provides that if it is necessary for the contractor to bear any sales or use taxes the government shall reimburse the contractor for such payments as elements of cost. The plant in which taxpayer does its work is owned by the Federal Government and all materials and equipment purchased under the contract are used either for incorporation in aircraft owned by the Federal Government or for adding to, maintaining, and repairing government-owned plant facilities, or are consumed in work performed in connection with these services.

The purchase orders used by taxpayer under the aforesaid contract provide as follows: "The materials covered by this order and for the exclusive use of the United States and title to the same vests in the United States upon their delivery to the contractor whose name appears on the face of this purchase order. State and local taxes are not applicable to this purchase which is for the sole account of the United States. Invoices for payment shall be submitted to the contractors to be paid and charged to the account of the United States."

The taxpayer raises the following questions:

(1) *Are sales to and purchases by taxpayer of materials and equipment installed in aircraft exempt from tax under Section 406(d) of the Revenue Act?*

The provision referred to is as follows:

"Where any person, firm or corporation has entered into a contract with the Federal, state, or local governments, or any agency thereof, or with any private person, firm, or corporation, or other party whatsoever, to manufacture or fabricate tangible personal property including ships, boats, aircraft, equipment, ordnance, or any other products or articles of commerce, for cost or for cost plus a fixed fee, sales to such manufacturer or fabricator of materials which shall enter into and become an ingredient or component part of the product manufactured or fabricated shall not be subject to retail sales tax or use tax."

The facts stated in taxpayer's letter do not indicate whether any of the equipment installed by taxpayer in aircraft is manufactured or fabricated by taxpayer. If any of such equipment is manufactured or fabricated by taxpayer, sales to and purchases by taxpayer of materials entering into such manufactured equipment should be exempt from the 3 per cent under the provision referred to.

(2) *Are sales to and purchases by taxpayer of gasoline and oil, placed in aircraft and used in their flight, exempt from the State gasoline tax of six cents per gallon?*

(a) Gasoline: North Carolina does not impose any tax upon gasoline designed for use in aircraft, which is not suitable to use in automobiles. However, if the gasoline referred to is regular automobile gasoline and oil, it would be possible for taxpayer, by complying with the requirements of the gasoline tax law (G. S. 105-430, et seq.), to obtain a rebate of five cents per gallon on all such gasoline not used upon the highways. However, such refund is not available unless the provisions of law regarding the obtaining of a refund permit are complied with prior to the use of the motor fuel.

(b) Motor Oil: Sales of motor oil to taxpayer for use in delivering and testing aircraft would be liable to the 3 per cent sales and use tax, even though the planes are owned by the Federal Government.

(3) *Are sales to and purchases by taxpayer of machines and equipment, including accessories, entitled to be classed as wholesale sales under Section 406(m) of the Revenue Act?*

Section 406(m) is as follows:

"For the purposes of this article, sales of mill machinery or mill machinery parts and accessories to manufacturing industries and plants may be classed as wholesale sales and, therefore, only subject to the wholesale rate of tax."

There is a well defined distinction in sales tax law between a contractor and a manufacturer. In the case of the contractor, the rendering of a service is the principal factor and the purchase and processing of materials by the contractor is only incidental to the rendering of the service. In the case of the manufacturer, the principal element is the fabrication and sale of a product or article of commerce. In my opinion taxpayer's business is essentially that of a contractor. The servicing aspect of the business is predominant and to classify taxpayer as a manufacturer within the well accepted meaning of that

term would require a strained construction which would not be justified. I, therefore, conclude that the exemption relating to mill machinery is not available to taxpayer in this case.

(4) *Are sales to and purchases by taxpayer of tangible personal property, except such sales as may be exempt under the provisions of Section 406(d), subject to State sales and use taxes?*

Sales to and purchases by a cost-plus-a-fixed-fee contractor with the Federal Government are not entitled to exemption unless the contract constitutes the contractor an agent of the Federal Government for the purpose of purchasing property to be used in fulfilling the contract. The contract under consideration does not constitute the taxpayer the purchasing agent of the Federal Government. It provides that the taxpayer "shall furnish and deliver all of the supplies or services described in Schedule A, attached hereto." Thus, the taxpayer undertakes as an independent contractor to provide the supplies and services, while the Federal Government undertakes to reimburse taxpayer for the costs of materials and supplies. The contract does not authorize the contractor to pledge the credit of the Federal Government. If the contractor should for any reason fail to pay for the supplies or equipment, the vendors would have no right of action against the Federal Government. Hence, the taxpayer is an independent purchaser under the following test laid down by the Supreme Court in *Alabama v. King & Boozer*, 314 U. S. 1, 10: "But it seems plain . . . that under the provisions of the statute the purchaser of tangible goods who is subject to the tax measured by the sales price is the person who orders and pays for them when the sale is for cash or who is legally obligated to pay for them if the sale is on credit."

The fact that the contract provides that title shall vest in the Federal Government upon delivery to the contractor does not alter this conclusion since the sale to the contractor may be complete at the time of the delivery of the property. Further, the purchase order which contains the provisions quoted above does not make the contractor the purchasing agent of the Federal Government. This office has ruled that only where the purchase order states that the Federal Government is obligated to the vendors for the purchase price is a purchasing agency established.

The provision of the purchase order quoted in taxpayer's letter does not pledge the credit of the Federal Government but merely describes the procedure for the submission and payment of invoices. The purchase order makes it clear that the order is to be paid for by the contractor. It is therefore my conclusion that all sales to and purchases by taxpayer, except those stated in this letter to be exempt, may validly be subjected to North Carolina sales and use taxes.

(5) *Is taxpayer liable for sales tax upon meals served in the floating hotel known as the "Amphitrite," and for use tax on food purchased for said meals?*

This hotel is furnished by the United States Navy and is located on a navigable stream. It is used as a hotel and restaurant for tax-

payer's employees at Elizabeth City. The agreement between taxpayer and the government provides that taxpayer will be reimbursed for its costs in managing and operating the hotel after crediting against such costs income received from the operation and management. Rentals and prices charged are subject to approval or change by the Navy. Any profits or losses are borne by the Navy. Taxpayer also states that the "Amphitrite" will be shortly moved and a cafeteria will be operated at taxpayer's plant under a similar contractual agreement. Purchases of food used in the meals are made under the provisions of the basic contract already referred to.

This office has ruled that where, by virtue of the peculiar provisions of the contract, a contractor was constituted the purchasing agent of the Federal government, purchases made in the operation of a cafeteria by the contractor under a similar arrangement to that under consideration were not taxable. See opinion to Lt. B. E. Thomson, dated 13 August, 1943. However, since the basic contract between taxpayer and the government does not make taxpayer the purchasing agent of the government, I can find no ground upon which to conclude that purchases of food or sales of meals are exempt from tax.

(6) Is taxpayer liable for sales taxes on materials sold to other manufacturers?

Taxpayer has on hand quantities of surplus idle aircraft materials and equipment which it has undertaken to sell for the Navy. All such materials and equipment are owned by the Federal Government and taxpayer receives no additional compensation for disposing of these materials and equipment for the Navy. It is my opinion that in this activity taxpayer is acting essentially as an agent of the Navy and is not liable for sales tax on such sales.

CHAIN STORE TAX; LEASED HAT DEPARTMENTS OPERATING IN LICENSED CHAIN STORES

22 March, 1944.

You have requested my opinion whether the Wilmer Hat Company is liable to the State of North Carolina for chain store tax for its leased hat departments which it operates in the H. L. Green Company department stores. The H. L. Green Company, Inc., operates a chain of stores and pays the chain store tax thereon. The Wilmer Hat Company contends that since it operates its leased departments within these licensed stores, it is not liable for any additional chain store license tax.

The Wilmer Hat Company has advised me of the following facts with regard to the operating arrangement of the above named company:

1. The hat departments are located within the H. L. Green Company stores under a lease agreement.
2. The employees who work within the hat departments are considered employees of the Wilmer Hat Company and are subject to their direction and control, even though they are required to conform to the H. L. Green Company store rules.

3. The Wilmer Hat Company is free to select the quality and quantity of the merchandise sold, and it determines the prices which shall be charged therefor.

4. The management of the leased department is entirely within the control of the Wilmer Hat Company.

5. Under the terms of the lease, all money collected from sales is deposited to the H. L. Green Company account and at the end of each week the latter company deducts 14 per cent of this money as a rental fee and sends the Wilmer Hat Company a check for the balance.

8. There are no signs or other indications that the hat departments are in any way separate from the other departments in the H. L. Green Company stores.

Section 162 of the Revenue Act is in part as follows:

"Every person, firm, or corporation engaged in the business of operating or maintaining in this State, under the same general management, supervision, or ownership, two or more stores, or mercantile establishments where goods, wares, and/or merchandise is sold or offered for sale, or from which such goods, wares, and/or merchandise are sold and/or distributed at wholesale or retail, or controls by lease, either as lessor or lessee, or by contract, the manner in which any such store or stores are operated, or the kinds, character, or brands of merchandise which are sold therein, shall be deemed a branch or chain store operator, and shall apply for and obtain from the Commissioner of Revenue a State license for the purpose of engaging in such business of a branch or chain store operator, . . ."

It will be noted that the tax applies to a person, firm or corporation who or which "controls, by lease, either as lessor or lessee, or by contract, the manner in which any such store or stores are operated, or the kinds, character, or brands of merchandise which are sold therein." The Wilmer Hat Company, in my opinion, falls within this definition of a branch or chain store operator since it controls the merchandise sold in two or more stores by contract, and also the management of the leased departments.

The business of Wilmer Hat Company is an entirely different business from that of H. L. Green Company, Inc., in which stores the leased hat departments are located, and as such, in my opinion, would not be covered by the chain store licenses issued to the H. L. Green Company, Inc.

If the Department of Revenue has applied any different ruling in the past, I suggest that as a matter of fairness to the taxpayer, the view expressed in this letter be applied prospectively only, and after reasonable notice to the taxpayer.

LIABILITY OF GREENSBORO MUNICIPAL COURT FOR PROCESS TAX UNDER SECTION 157 OF THE REVENUE ACT

23 March, 1944.

By letter of 31 August, 1943 I expressed the opinion that the Greensboro Municipal Court was liable for process tax under Section 157 of the Revenue Act. That opinion was based upon information furnished me from your Department to the effect that said Court had assessed

and collect the process tax. You state that further investigation by your Department does not establish that this tax was in fact collected.

Since my former opinion was based largely upon the assumption that the tax had been collected by the Greensboro Municipal Court, and since this information was erroneous, I now advise that in my opinion such tax can not be collected, in view of the provisions of Chapter 351 of the Session Laws of 1943, which specifically provides as follows:

"Provided, further, that the provisions of Section one hundred and fifty-seven, Chapter one hundred and fifty-eight, Public Laws of one thousand nine hundred and thirty-nine, shall not apply to the civil division of the Greensboro Municipal-County Court: Provided, further, that the Clerk of the Greensboro Municipal-County Court, the City of Greensboro, its officers or employees, shall not be liable for any sum provided for by Section one hundred and fifty-seven, Chapter one hundred and fifty-eight, Public Laws of one thousand nine hundred and thirty-nine, not collected on suits heretofore instituted in the civil division of said Greensboro Municipal-County Court."

I, therefore, advise that your assessment of process tax against this Court should be cancelled.

SALES OF SACRAMENTAL WINES

27 March, 1944.

By memorandum I recently informed you of my opinion that sales of sacramental wine were not exempt from tax under Schedule F of the Revenue Act. When I wrote that memorandum I was not advertent to an opinion of this office rendered on June 11, 1937 (see Volume 24, Biennial Reports of the Attorney General, page 175) to the effect that shipments of sacramental wine into this State directly to clergymen and religious organizations are not subject to tax. I have given careful reconsideration to this matter and have concluded to follow the earlier opinion of this office.

I, therefore, advise that out of state manufacturers and dealers may legally ship sacramental wines directly to clergymen and religious organizations in this State subject to the provisions of G. S. 18-21, which is as follows:

"Sec. 18-21. *Wine for sacramental purposes.*—It is lawful for any ordained minister of the gospel who is in charge of a church and at the head of a congregation in this state to receive in the space of ninety consecutive days a quantity of vinous liquor not greater than five gallons, for use in sacramental purposes only, and it shall be lawful for him to receive same in one or more packages or one or more receptacles. (1923, c. 1, s. 20; 1935, c. 114; C. S. 3411(t).)"

For your further information I enclose a copy of the earlier opinion of this office.

FRANCHISE TAX; NO DEDUCTION FROM TAX BASE OF RESERVE FOR
UNREALIZED PROFITS

28 March, 1944.

You inquire whether an item in the amount of \$19,396.21, carried on the return as "reserve for unrealized profit," may be deducted by the Hugh Macrae Company, Inc., from its tax base used in computing the franchise tax imposed in Schedule C of the Revenue Act. This reserve, according to the taxpayer, represents charges to customers for deferred profits on the sale of assets, and, as the money is collected, it is charged to profit and loss and subsequently to earned surplus. Taxpayer contends that this amount is not actually surplus and should, therefore, not be included in the Franchise tax base.

Section 210(c) of the Revenue Act provides that in ascertaining the base for franchise tax every corporation taxed under the Act shall determine the amount of its issued and outstanding capital stock, surplus, and undivided profits, and "no reservation or allocation from surplus or undivided profits shall be allowed other than for definite and accrued legal liabilities, except as herein provided; taxes accrued, dividends declared and reserves for depreciation of tangible assets as permitted for income tax purposes shall be treated as deductible liabilities." This section clearly does not authorize a deduction of a reserve for unrealized profits, nor does any other portion of the franchise tax article. Such a reserve is not a definite or accrued legal liability, and it is my opinion that it should be included in the amount of capital stock, surplus, and undivided profits used in determining the franchise tax base.

SALES AND USE TAXES; CONTRACT NOy-4750

29 March, 1944.

The Navy Department has raised certain questions regarding the liability of the cost-plus-a-fixed-fee contractor under the above numbered contract for sales and use taxes to the State of North Carolina on account of sales to and purchases by said contractor in fulfillment of the contract. These questions and my opinions thereon are as follows:

(1) *May the contractor be classed as a retailer on the theory that it resells to the Federal Government?*

The Navy Department, in a very thorough memorandum upon the subject, forcefully contends that under Schedule E of the Revenue Act of 1939, as amended, the contractor occupies the legal status of a retailer and that, therefore, sales to said contractor are necessarily wholesale sales and subject only to the wholesale tax of one-twentieth of one per cent. This position is based upon the view that a cost-plus contractor is essentially buying tangible personal property which is resold as such to the Federal Government.

This contention of the Navy Department was urged upon you as long ago as July 1942 and at that time this office prepared a memorandum regarding this matter for your consideration. At that time

you determined to reject the requested construction and to continue to regard sales to a cost-plus contractor as sales for use and consumption.

In support of the view which you have taken, I refer to Paragraph VII (3) of the Sales tax rules and regulations (Paragraph 21,286 of the Prentice-Hall, State & Local Tax Service, North Carolina Division). This paragraph of the regulations, which are promulgated by the Commissioner of Revenue under legislative authority, contains the following provisions:

"Contractors engaged in the business of making contracts for erecting, constructing, improving, altering and repairing any building or other structure of any nature or description in which contract the contractor agrees to furnish the materials, supplies and necessary services upon the basis of a lump-sum price, cost-plus price, or upon a time-and-materials basis with an upset or guaranteed price, are liable for payment of the three per cent (3%) sales tax levied under authority of Section 405, Article V, Schedule 'E,' to building material dealers having an established place of business in this State, or to dealers located outside the State who are properly certified by the Department of Revenue as cooperating to the extent of assuming responsibility for collecting the tax, which building material dealers are in turn liable for reporting such sales and purchases to the Department of Revenue and paying the tax due thereon.

"Contractors, engaged in the business of making contracts for erecting, constructing, improving, altering and repairing any building or other structure of any nature or description in which contract the contractor agrees to sell the materials and supplies at a fixed price or at the regular unit price and to render services in connection therewith for an additional agreed price, or on the basis of time consumed, are liable for reporting such sales to the Department of Revenue and paying thereon the three per cent (3%) rate of tax. The taxable amount to be reported to the Department of Revenue shall be the total gross sales of all taxable materials used or consumed in such contract, figured at the regular unit or retail price, which amount shall in no instance be less than the purchase price of the materials used or consumed in connection with the fulfilling of such contract."

Thus, a distinction is drawn in the sales tax regulations between contractors agreeing to furnish materials, supplies and services, and contractors agreeing to sell materials and supplies at a stated price and to render services in connection therewith for an additional agreed price. The former contractors are liable for the payment of the 3 per cent tax to their vendors; but the latter are not liable to pay the tax on sales made to them but are only liable to report and pay the tax on the materials which they sell. However, where the latter sales are to the Federal Government there would be no liability for reporting or paying the tax since direct sales to the Federal Government are exempt from taxation. In these regulations you have recognized a distinction between contractors who agree to furnish materials and services and those who agree to sell materials and in addition thereto to furnish services. The contract under consideration does not

at any place refer to a sale of materials by the contractor to the Federal Government but specifically provides as follows:

"Article 9.—(a) All materials required for the accomplishment of the work under this contract shall be provided by the Contractors, including materials, articles, and supplies required for temporary use and such as may be consumed in use."

The contractor under this provision is to "provide," or furnish the materials, and not sell them.

In view of the foregoing, it is my opinion that you have ample legal authority to continue to regard selling to cost-plus contractors as sales for use and consumption and not as sales for resale and I am informed that this view is that accepted by most of the jurisdictions levying sales taxes in the United States.

(2) Are sales to and purchases by the contractor of materials and supplies entering into inside telephone equipment exempt from tax?

The specific question is whether sales to and purchases by a cost-plus-a-fixed-fee contractor with the Federal Government of tangible personal property entering into the construction of a complete telephone system are exempt from sales and use taxes. My views upon this question are fully set out in a letter of this office dated 29 April, 1943 to Mr. J. F. Havens, Chief Accountant of the Carolina Telephone & Telegraph Company, and I attach a copy of that letter to this opinion.

(3) To what extent does the State have jurisdiction to levy the project tax provided for by Section 122 of the Revenue Act upon a contractor performing work within a Federal reservation?

I enclose herewith an opinion of this office which states the general principles applicable to this question. See opinion dated 6 May, 1943, to Honorable Edwin Gill, Commissioner of Revenue. As pointed out therein, the question of whether the State may validly levy a privilege tax upon the contractor doing work on the Federal reservation depends upon whether the contractor has entirely insulated himself from the jurisdiction of the State.

Title 40, U.S.C.A., Section 255, which was enacted in 1940, provides that acceptance of exclusive jurisdiction of lands within a state by the Federal Government may be made by filing notice of such acceptance with the Governor of the state or in such other manner as may be prescribed by the State law; and that unless and until the United States has accepted jurisdiction over lands acquired after the passage of this act in this manner, it shall be conclusively presumed that no such exclusive jurisdiction has been accepted.

I have inquired of the Governor's office whether the Federal Government has accepted exclusive jurisdiction over the Marine reservation at New River and have been advised that such acceptance, if made, has not been located. However, for the purpose of this letter, I will assume that the Federal Government did accept exclusive jurisdiction over this area.

I should like to point out the following factors which indicate that in the performance of contract number NOy-4750 the contractor was not insulated from the jurisdiction of the State of North Carolina.

(a) Article 15 of the contract provides that "the contractors, shall determine what permits or licenses are required in connection with the accomplishment of the work under this contract and shall take the necessary action to secure the same as required," and the cost of such licenses and permits is included in allowable cost by Article 25(f). This requirement was given great weight by the Supreme Court of the United States in *Silas Mason Co. v. Tax Commission*, 302 U. S. 186, 82 L. Ed. 187, which upheld the imposition of state license taxes. In that case the Court said:

"In particular, appellants' contracts assumed that state jurisdiction would extend to activities of the contractors. *They were to obtain all required licenses and permits.*" (Italic added.)

(b) Article 25(b) of the contract provides that allowable costs shall include "compensation and employer's liability insurance." It is my understanding that pursuant to this provision the contractor carried workmen's compensation as provided by the laws of the State of North Carolina and received advantage from this fact. This situation was also given weight by the Court in the *Silas Mason* case, *supra*.

In view of these considerations, it is my opinion that the State of North Carolina has jurisdiction to impose the project tax levied by Section 122 of the Revenue Act.

INHERITANCE TAX; NOTICE AND CONSENT REQUIRED FOR PAYMENT OF CONTRACTS AND ANNUITIES OTHER THAN LIFE INSURANCE

5 April, 1944.

You inquire whether it is necessary for life insurance companies to give notice to the Commissioner of Revenue before paying the proceeds of annuities and other contracts which are not policies of insurance upon the life of the decedent.

Section 21½ of the Revenue Act of 1939, as amended, provides that there shall be no payment by persons, firms, or corporations holding assets or property belonging to a decedent to any person whatsoever without retaining a sufficient amount to pay any inheritance tax thereon, unless the Commissioner of Revenue consents in writing to such transfer. The last sentence of the first paragraph then contains the following provision:

"Notwithstanding any of the provisions of this section, any life insurance company may pay the proceeds of any policy upon the life of a decedent to the person entitled thereto as soon as it shall have mailed to the Commissioner of Revenue a notice, in such form as the Commissioner of Revenue may prescribe, setting forth the fact of such payment; but if such notice be not mailed, all of the provisions of this section shall apply."

The statute specifically confines this exception to payment of "the proceeds of any policy upon the life of a decedent to the person entitled thereto." It is my opinion that this provision was not intended to include or extend to contracts other than those upon the life of the decedent. Before paying such funds held under annuity or other contracts not constituting insurance upon the life of the decedent, it is my opinion that a release must be obtained as in the case of other assets held in custody.

FRANCHISE TAX; PLANTATION PIPE LINE

5 April, 1944.

You have requested my opinion upon the question whether the Plantation Pipe Line Company is liable for franchise taxes to the State of North Carolina.

This is a foreign corporation, domesticated in North Carolina, which operates a pipe line through North Carolina which is used for the transportation of petroleum products. Since none of these products originate at a point within the State and are shipped to another point within the State, the corporation (hereinafter referred to as the taxpayer) contends that its business is interstate commerce and that it is not subject to the franchise taxing jurisdiction of the State of North Carolina.

The franchise tax in this State is levied by Schedule C of the Revenue Act of 1939, as amended. Section 201 of this Schedule provides that "the taxes levied and assessed in this article or schedule shall be paid as specifically herein provided, and shall be for the privilege of engaging in or carrying on the business or doing the act named; and, if taxpayer be a corporation, shall be a tax also for the continuance of its corporate rights and privileges granted under its charter, if incorporated in this State, or by reason of any act of domestication if incorporated in another state, . . ."

In my opinion this statute brings the Plantation Pipe Line Company within its purview, and the decision in *Stone, Commissioner v. Interstate Natural Gas Co.*, 103 F. (2d) 544, sustains the validity of such a statute.

SALES AND USE TAXES; SALES OF REPOSSESSED AUTOMOBILES BY FINANCE COMPANY

7 April, 1944.

You request my opinion upon the following matter.

The M and J Finance Company, hereinafter referred to as the taxpayer, is a domestic corporation engaged in the business of making loans and particularly of discounting notes and mortgages taken by automobile dealers in connection with their sales. A typical transaction of this type is where an automobile dealer will sell an automobile to a customer, receive part of the purchase price in cash, and take a note for the balance secured by a mortgage or conditional sales contract upon the automobile. The dealer will then assign and transfer by proper endorsement the note and lien to taxpayer for a stated consideration paid by taxpayer.

Occasionally the purchasers of the automobiles default in the payment of the balance of purchase price due and it is necessary for either the dealer or the taxpayer to repossess the automobile sold. In some instances the repossession is made by the dealer. However, in the great majority of cases the repossession is made by the taxpayer. In order to dispose of these repossessed cars, taxpayer has chosen to sell them at private sale at a "used car exchange," which consists of a used car lot at which the cars are displayed, advertised and sold.

A sales tax assessment has been made upon taxpayer with respect to the repossessed cars sold through this used car exchange and taxpayer has contested the assessment on the ground that such sales are exempt from tax by virtue of Section 406(h) of the Revenue Act which contains the following provision:

"The resale of articles repossessed by the vendor shall likewise be exempt from gross sales taxable under this article."

Taxpayer contends that since it repossesses the cars under authority received from the original vendors through assignment of the papers, it stands in the shoes of the original vendors and is entitled to the quoted exemption. You desire my opinion upon the soundness of this contention.

It is clear that the bare wording of the statute does not bring the taxpayer within its terms. A "vendor" is one "who transfers property for sale" or is "the party by whom a sale is made." 66 C. J., p. 431.

The vendors in the transactions referred to are the dealers and not the taxpayer.

Since the taxpayer is not touched by the literal wording of the exemption, the question arises whether the legislative intent favors the taxpayer's interpretation. Upon this point the taxpayer contends that the legislative purpose was that only one sales tax should be collected where an article has been sold and has then been repossessed in consequence of a default in the purchase price; and that this intent is carried out by giving the taxpayer the benefit of the exemption to the same extent as if the vendor makes the repossession.

I have given careful consideration to the views of the taxpayer but I am constrained to the opinion that his contention is not sound. The sales tax is levied as a license or privilege tax for engaging in the business of a merchant in this State. Revenue Act, Section 401. The tax is not levied against the transaction of sale but against the merchant making the sale. It is not illegal for the merchant to fail to collect the tax from his customers although the law intends that he shall do so. The merchant is liable for the tax regardless of whether he collects it. Thus, the tax is levied against the person selling and not against the sales transaction. It is therefore my opinion that the exemption relied on by the taxpayer was intended to relieve the vendor, who is the person paying the first tax, from the burden of another tax in the sale of the repossessed car. Otherwise the vendor would actually pay two sales taxes in connection

with the disposal of the same article. However, where the car is repossessed and sold by another party, the payment of the tax by such other party does not result in further burdening the vendor, and it would seem that the exemption does not extend to this situation.

I therefore advise that in my opinion the sales referred to are not entitled to the exemption of Section 406(h). I hardly need point out that the law does not favor the expanding of an exemption from taxation beyond its strict limits. It has been repeatedly held that exemptions from taxation are strictly construed against the taxpayer. *McCanless Motor Co. v. Maxwell*, 210 N. C. 725; *Benson v. Johnston County*, 209 N. C. 751; *Stedman v. Winston-Salem*, 204 N. C. 203.

SALES TAX; CHAIN STORES; \$1.00 MERCHANT'S LICENSE

11 April, 1944.

You inquire whether a person operating a chain of stores is liable for only a single \$1.00 merchant's license required under Section 405 of the Revenue Act, or whether a separate license must be acquired for each store operated in the chain.

Section 405 is in part as follows:

"If any person, after the thirtieth day of June, one thousand nine hundred thirty-nine, shall engage or continue in any business for which a privilege tax is imposed by this article, such person shall apply for and obtain from the commissioner, upon the payment of the sum of one dollar (\$1.00) a license to engage in and conduct such business upon the condition that such person shall pay the tax accruing to the State of North Carolina under the provisions of this article; and he shall thereby be duly licensed to engage in and conduct such business."

It is my opinion that the intent of this section is to require a license fee from every person, defined in the Sales Tax Article to include any firm, partnership, association, corporation, estate or trust, engaging in the business of selling merchandise at retail and that it does not require that a license be obtained for every place of business owned and operated by a licensee. The license is for the privilege of engaging in business and it is not based on the number of places of business maintained.

WILLS; DISPOSITION OF PROPERTY WHERE DEVISEE OR LEGATEE DIES BEFORE TESTATOR

14 April, 1944.

FACTS: A man executes a will devising and bequeathing real and personal property to his two daughters. One of his daughters predeceases him leaving no issue.

QUESTION: At the testator's death, what is the correct disposition of the property left to the deceased daughter?

At common law, if a devise of real estate or any interest therein failed to take effect by reason of the death of the devisee before the testator, the property devolved upon the heirs of the testator and neither the residuary devisees nor the heirs of the prior deceased

devisee were entitled to it in the absence of a provision in the will showing a contrary intent. In the case of personal property, the lapsed legacy fell into the residuary clause when the will contained one, and there was no contrary intent shown. If there was no residuary clause in the will, the personalty was distributable among the testator's next of kin, just as in the case of intestacy. *Lea v. Brown*, 56 N. C. 148; *Smith v. Smith*, 56 N. C. 308; *Saunders V. Saunders*, 108 N. C. 327; *Mordecai's Law Lectures*, Vol. II, p. 1167.

Statutory provisions dealing with the subject in North Carolina are found in Sections 31-42 and 31-44 of the General Statutes. These sections are as follows:

"Sec. 31-42. *Lapsed and void devises pass under residuary clause.*—Unless a contrary intention shall appear by the will, such real estate or interest therein as shall be comprised or intended to be comprised in any devise in such will contained which shall fail or be void by reason of the death of the devisee in the life-time of the testator, or by reason of such devise being contrary to law or otherwise incapable of taking effect, shall be included in the residuary devise (if any) contained in such will: Provided, there shall be no lapse of the devise or legacy by reason of the death of the devisee or legatee during the life of the testator, if such devisee or legatee would have been an heir at law or distributee of such testator had he died intestate, and if such devisee or legatee shall leave issue surviving him; and if there is issue surviving, then the said issue shall have the devise or bequest named in the will. (Rev., s. 3142; Code, s. 2142; R. C., c. 119, s. 7; 1844, c. 88, s. 4; 1919, c. 28; C. S. 4166.)"

"Sec. 31-44. *Gifts to children dying before testator pass to their issue.*—When any person, being a child or other issue of the testator, to whom any real or personal estate shall be devised or bequeathed for any estate or interest not determinable at or before the death of such person, shall die in the lifetime of the testator, leaving issue, and any such issue of such person shall be living at the death of the testator, such devise or bequest shall not lapse, but shall take effect and vest a title to such estate in the issue surviving, if there be any, in the same manner, proportions and estates as if the death of such person had happened immediately after the death of the testator, unless a contrary intention shall appear by the will. (Rev., s. 3143; Code, s. 2143; R. C., c. 119, s. 8; C. S. 4168.)"

From the wording of these statutes, it seems clear that the common law rule is abrogated (1) in that it is provided that where the deceased devisee leaves no issue surviving, a devise of real estate or any interest therein shall be included in the residuary clause of a will, if any, and (2) that if a prior deceased legatee or devisee leaves issue surviving, the real and personal property shall go to such issue and not lapse. If the prior deceased devisee or legatee leaves no issue surviving, the devise or bequest lapses and passes under the residuary clause, if any. In either case if there is no residuary clause, and no surviving issue, the property passes as in the case of intestacy. This interpretation seems to have been adopted by the Court in *Stevenson v. Trust Co.*, 202 N. C. 92. In this case a testator left all of his property to his wife for her life and directed that after her death it should be reduced to cash and distributed among his brothers and sisters, if

living, and if not living, to their legal representatives. One of the brothers of the testator died without issue prior to his (the testator's) death and the court held that the legacy as to him lapsed. Presumably, had there been issue of the prior deceased brother, much issue would have been entitled to take under the proviso of Section 31-42, since in this case the brother was an heir at law and a distributee of the testator.

I, therefore, conclude that under the facts stated above, the share of the prior deceased daughter must be included as a part of the residuary clause of the testator's will. This is true, of course, unless there is a contrary intent expressed in the will.

INCOME TAXES; CANNON MILLS CO.

17 April, 1944.

You have referred to me the question whether the Cannon Mills Company is entitled to an additional depreciation deduction in its State income tax returns for 1937, 1938, 1939 and 1940, over the amount taken in its Federal income tax returns for said years.

Taxpayer had filed its income tax returns with the Commissioner of Revenue of North Carolina and paid the tax shown thereby to be due for the years 1931, 1932, 1933 and 1934. The depreciation allowable for these years was governed by Section 322(8) of the Revenue Acts of 1931 and 1933. The Commissioner of Revenue closed taxpayer's returns for the years 1931-1934 after allowing the same depreciation deduction as that claimed by the taxpayer in its Federal income tax returns for said years. Taxpayer did not claim depreciation deductions for these years to the extent of the maximum sanctioned by Section 322(8), and was not allowed this maximum amount by the Commissioner of Revenue.

Section 322(8) of the Revenue Acts of 1931 and 1933 allowed as a deduction from gross income:

"8. A reasonable allowance for the depreciation and obsolescence of property used in the trade or business; . . . : Provided, that in computing deductions allowed under this section the basis shall be as follows:

"(1) Property acquired prior to January first, one thousand nine hundred and twenty-one:

"(a) With respect to property acquired on or before January first, one thousand nine hundred and sixteen; depreciated cost at January first, one thousand nine hundred and sixteen, as adjusted by the United States Internal Revenue Department as of that date, shall be the maximum value, subject to depreciation under this act, from and after January first, one thousand nine hundred and twenty-one.

"(b) With respect to property acquired subsequent to January first, one thousand nine hundred and sixteen, and prior to January first, one thousand nine hundred and twenty-one, the original cost, plus additions and improvements, shall be the maximum value, subject to depreciation under this act, from and after January first, one thousand nine hundred and twenty-one."

Since taxpayer owns a large amount of depreciable property acquired prior to January 1, 1921, the depreciation deduction for 1931,

1932, 1933, and 1934 would have been increased by approximately \$656,834.55 per year, if these maximum bases had been used. In the Revenue Act of 1935, and subsequent revenue acts, the basis was changed to read as follows:

"The cost of property acquired since January 1, 1921, plus additions and improvements, shall be the basis for determining the amount of depreciation, and if acquired prior to that date the book value of the property shall be the cost basis for determining depreciation."

The three year statute of limitations contained in the Revenue Acts with respect to income taxes bars the recovery by taxpayer of the taxes which would have resulted from the allowance of the additional depreciation deductions. Taxpayer now contends that it is entitled to offset against income tax liabilities for the years 1937 to 1940 inclusive, the amount of the barred overpayments for the years 1931 to 1934. The basis for this contention is that it is justified under the equitable doctrine of recoupment, which is hereinafter referred to.

It is my opinion that taxpayer is not entitled to the offset claimed. Section 322(8) of the Revenue Acts of 1931 and 1933 authorized the deduction of a "reasonable" amount for depreciation, subject to certain maximum bases. Taxpayer did not claim these maximum allowances, but rather the same deductions claimed on the Federal returns (which are also based on "reasonable" allowances). The question of what deductions for depreciation are reasonable must be determined by the Commissioner, and by auditing taxpayer's returns for the years 1931, 1932, 1933 and 1934, and accepting the deductions claimed by taxpayer, the Commissioner determined that said deductions were reasonable. Even if the doctrine of equitable recoupment could be applied in this case, it is not proper for the Commissioner, after the running of the statute of limitations, to determine that a basis in excess of that formerly claimed and allowed is now reasonable. If this principle were once recognized, it would unsettle the administration of income taxes, and many returns would be subject to review in subsequent years with regard to the reasonableness of certain deductions. There was nothing mandatory in the acts of 1931 and 1933 with respect to the allowance of the maximum bases. The Commissioner could not allow more than the maximum, but he could allow less. The taxpayer claimed less and the Commissioner found the amount claimed to be reasonable. The Commissioner was not asked to review this finding within the three years allowed by law from the filing of the returns. See Revenue Act, Section 340. The matter has now been settled and closed and cannot, in my opinion, be legally adjusted at this time.

The taxpayer invokes the equitable doctrine of recoupment, which was applied in *Bull v. United States*, 295 U. S. 247; *Mills v. United States*, 35 Fed. Supp. 738; *Dixie Margarine Co. v. Commissioner*, 115 F. (2d) 445, and other authorities.

However, it is my opinion that in view of the considerations already referred to, the application of this doctrine is not proper in this case.

MOTOR FUEL TAXES; INSPECTION FEE ON GASOLINE SOLD TO
FEDERAL GOVERNMENT

21 April, 1944.

You have referred to me the letter of March 31, 1944 of the Sinclair Refining Company with a request that I give you my opinion upon the questions therein raised. That letter has been supplemented with additional information by letter of April 18, 1944.

The Sinclair Refining Company, hereinafter referred to as the taxpayer, claims a refund of \$7,913.39, which it paid to the State from August 1, 1942 through July 1943, as inspection fee on gasoline sold to the Federal Government and delivered to Federal Governmental premises located within the State of North Carolina. Some of the shipments were made into areas within the exclusive jurisdiction of the Federal Government and some were made to points not within the exclusive jurisdiction of the Federal Government.

Orders for the gasoline in question were placed by the purchasing officials of the respective Federal agencies involved from the various points in North Carolina where such agencies were located. The orders were received directly from such Federal agencies at taxpayer's office in Atlanta and accepted there. Shipments were made from storage terminal facilities located outside of the State of North Carolina or from taxpayer's terminal at Wilmington, North Carolina, or from pipe line terminals located within or without the State of North Carolina. From all such terminal locations, storage or pipe line, all shipments were made by common carrier or transport trucks owned by the company to their destinations. Shipments from the terminal points by rail were made under the usual railroad "uniform bill of lading" showing taxpayer to be the shipper. Shipments made by transport truck were accompanied by "truck loading ticket and bill of lading" on which appears the following statement:

"If this shipment moves in other than shipper's vehicle, it shall be governed by (a) The contract between shipper and carrier; or (b) The terms of the applicable uniform bill of lading form prescribed in national motor freight classification number 4 . . . if carrier is a common carrier, provided that, if this is an intrastate shipment by common carrier in a state where bills of lading have been legally prescribed, this shipment shall be governed by the terms of applicable bill of lading."

All bills of lading accompanying rail and truck shipments from ship line and storage terminal points were converted by the Government to Government bills of lading when such shipments reached the point of destination.

Shipments originating at refinery points were subject to inspection by the Government at the refineries. Shipments from other than the refineries were subject to inspection by the Government at the point of destination.

All of the shipments in question relate to purchases by the Federal Government made from taxpayer under contracts entered into with the procurement division of the United States Treasury Department. There is no provision in any of these contracts which prescribes the time or place at which title to the gasoline passes to the purchaser.

Taxpayer contends that title to the gasoline passed to the Federal Government at the time of delivery to the transportation agency at the point of origin of each shipment and that such gasoline was not legally subject to the gasoline inspection fee levied by G. S. Section 119-18.

By letter to you of 22 April, 1943, this office expressed the opinion that where the Army of the United States received a bid from a motor fuel company to sell motor fuel at a stated price f.o.b. Port Arthur, Texas, where the fuel was subject to primary inspection and acceptance, and where such bid was accepted and the fuel was shipped from Port Arthur into a Federal reservation in North Carolina on a commercial bill of lading which was converted to a Government bill of lading on arrival at destination, the inspection fee could not be imposed. The reasoning of that opinion was that the inspection fee is levied to defray the expenses of motor fuel used, sold or offered for sale; that the use, sale, or offering for sale must occur within the State of North Carolina if this State is to have jurisdiction to levy the inspection fee; that the contract of sale was consummated beyond the limits of the State of North Carolina and since the motor fuel moved directly under the direction of the Army in interstate commerce into a Federal reservation there was no point in which the motor fuel came within the jurisdiction of the State of North Carolina so that the inspection fee could be levied.

There are certain differences between the situation there considered and the situation now presented. (1) Some of the shipments now in question were made from storage terminal facilities within the State of North Carolina and were hence not in interstate commerce. (2) Some of the shipments were made not by common carrier but by trucks under the control of the taxpayer. (3) Although taxpayer states that the gasoline was subject to inspection at refineries when it was shipped from refineries, it is not claimed that the gasoline in question was subject to primary acceptance by the Federal Government at the terminal points. (4) All of the shipments in question were made into areas within the exclusive jurisdiction of the Federal Government.

It is my opinion that all of the shipments which were made from terminal storage points or pipe line within the State of North Carolina are legally subject to the inspection fee. In such cases even if the contract of sale was consummated in Georgia, the gasoline was held in North Carolina and "used" or "offered for sale" in this State and hence falls within the statutory language which imposes the fees. This gasoline was stored within the jurisdiction of the State of North Carolina and was subject to be used to fill any orders which taxpayer might accept. In being held in this State for a commercial purpose, it was thus "used" by taxpayer within the State and the inspection fee would attach.

As to the shipments made into this State from terminals or pipe lines without the State, a different situation exists. If the orders for such gasoline were subject to acceptance by taxpayer in Atlanta

and were accepted there, it is my opinion that the contract of sale was consummated in Georgia. If, in such cases, taxpayer delivered the gasoline at the terminal points to a common carrier or to its own trucks for shipment into an area in North Carolina over which the Federal Government has exclusive jurisdiction, it is my opinion that this State does not have jurisdiction to impose the inspection fee. In such cases there would be a contract of sale consummated beyond our jurisdiction and a shipment in interstate commerce into an area over which the State has no jurisdiction to levy the inspection fee. Needless to say, if the shipment is not direct but the gasoline comes to rest in the State before delivery to the Federal Government, the inspection fee may be assessed.

I, accordingly, advise that in my opinion you should not refund to taxpayer the inspection fee on any shipments except those made from points without the State by common carrier or its own trucks directly to the Federal agencies within this State.

The correspondence which has been submitted to me does not indicate that taxpayer paid such inspection fees under protest. As you know, it is the general rule that unless taxes are paid under protest and demand for refund thereof made in due time, the taxpayer acquires no right to the refund or to enforce it by legal action but its granting lies within the discretion of the Commissioner of Revenue. See *Bunn v. Maxwell*, 199 N. C. 556; *M.G.M. Distributing Corp. v. Maxwell*, 209 N. C. 47. Thus, it is my opinion that you have no duty to refund and a taxpayer has no right to a refund of taxes under C. S. Section 105-406, or under Revenue Act Section 937, unless the taxpayer pays the tax under protest and demands a refund thereof in accordance with the statutory provisions. In exercising your discretion as to whether you should make the refund as a matter of grace, you may consider all the facts and circumstances involved and the equities of the matter.

INCOME TAXES; AMERICAN STEEL AND WIRE COMPANY

24 April, 1944.

You have referred to me your correspondence with the American Steel and Wire Company regarding the propriety of including in the allocation formula used for income tax purposes sales of taxpayer's property made by dealers in this State.

Taxpayer ships goods to dealers in this State from stocks maintained outside of this State. Title remains in taxpayer until the goods are withdrawn from consignment and sold by the dealers. The dealers are billed each month for all goods withdrawn from the consigned stocks and taxpayer looks alone to the dealers for payment.

Section 311(II)(2) of the Revenue Act of 1939 provides in part as follows:

"2. If the principal business of a company in this State is selling, distributing or dealing in tangible personal property within this State, the entire net income of such company shall be apportioned to North Carolina on the basis of the ratio obtained by taking the arithmetical average of the following two ratios.

"(a) The ratio of the book value of its real estate and tangible personal property in this State on the date of the close of the calendar or fiscal year of such company in the income year is to the book value of its entire real estate and tangible property then owned by it, with no deduction on account of encumbrances thereon.

"(b) The ratio of the total sales *made through or by offices, agencies, or branches* located in North Carolina during the income year to the total sales made everywhere during said income year." (Underlining added.)

Taxpayer contends that the sales referred to may not be considered as having been made through "offices, agencies, or branches located in North Carolina" and you request my opinion upon the soundness of that contention.

It is my opinion that the quoted provision of the Revenue Act embraces the sales referred to and that they should be included as North Carolina sales. As stated in 12 C.J.S., page 528: "A consignment of goods for sale is ordinarily a bailment, and does not imply a sale, *but imports an agency*, and that the title is in the consignor."

Taxpayer had placed in North Carolina a stock of goods the title to which was transferred under a contractual agreement with a North Carolina dealer. In my opinion this is an agency within the scope of the statute referred to above.

LICENSE TAX; CONTRACTORS AND CONSTRUCTION COMPANIES

11 May, 1944.

You have referred to me the letter of May 1, 1944, of Mr. Arnold M. Diamond, with reference to his liability for privilege tax under Section 122 of the Revenue Act.

Mr. Diamond states that his contract with the Federal Government for construction work in this State did not require him to carry Workmen's Compensation insurance. Several weeks ago you submitted to me copies of the contract or contracts and while I did not make a copy of them, it is my distinct recollection that they contained a provision similar to the following:

"The contractors shall determine what permits or licenses are required in connection with the accomplishment of the work under this contract and shall take the necessary action to secure the same as required."

The provision may not have been in this identical language but it is my recollection that it was substantially the same as that quoted above.

If my recollection is correct, it is my opinion that the State has jurisdiction to levy the project tax upon Mr. Diamond. See opinion of this office to Honorable Edwin Gill, Commissioner of Revenue, dated March 29, 1944.

The fact that the provision does not specifically refer to Workmen's Compensation does not alter the principle involved since the effect of this or a similar provision is that the Federal Government recognizes the State jurisdiction to the extent that any licenses or permits

are necessary under the State law. See *Silas Mason Co. v. Tax Commission*, 302 U. S. 186.

You inform me that the records of the Industrial Commission of this State show that Mr. Diamond in fact complied with the Workmen's Compensation laws of North Carolina. This is an additional evidence that the Federal Government did not assert exclusive jurisdiction over the area in which the work was performed.

FRANCHISE TAXES; MONTGOMERY WARD COMPANY; INCLUSION IN TAX
BASE OF SALES MADE THROUGH ORDER OFFICES AND
ORDER DESKS IN THIS STATE

19 May, 1944.

You state that you have made a proposed assessment of franchise taxes for the years 1939 and 1940 against the above named taxpayer based upon the inclusion in the sales factor of the allocation formula of all sales made by taxpayer which were made through order offices maintained by taxpayer in North Carolina, or through order desks maintained in regular retail stores in this State.

Taxpayer is a foreign corporation which is doing business in this State through retail outlets. It also maintains in this State order offices at which no regular merchandise is carried, but at which some samples are displayed and a customer may place an order for acceptance and filling at taxpayer's home office and for shipment in interstate commerce to the purchaser. Further, in taxpayer's retail stores in this State order desks are maintained at which orders of this type may be placed for merchandise which is not available in such stores. Some deliveries were made at the order offices or desks.

Section 210 of the Revenue Act, which prescribes the allocation formula for determining the portion of the capital stock, surplus and undivided profits of a foreign corporation that shall be included in the franchise tax base, provides that where the principal business of the corporation in this State is selling tangible personal property, one of the factors in the formula shall be "the ratio of the total sales made through or by offices, agencies, or branches located in North Carolina during the income year to the total sales made every where during said income year."

Taxpayer protests the inclusion of these sales in North Carolina sales, but does not specify the grounds for protest other than to state that the sales cannot be included since they were consummated beyond the jurisdiction of the State of North Carolina.

It is my opinion that the sales in question were made "through or by offices, agencies or branches located in North Carolina." The order offices and order desks in this State were equipped with taxpayer's property and operated by taxpayer's employees. It was at these agencies that the sales were solicited, salesmanship exercised, the nature and kinds of merchandise demonstrated or explained to the prospective customer, and in some instances the purchase price received and deliveries of the merchandise made. The acceptance of the orders at the home office was merely a formality for the follow-

ing reasons: (1) if the merchandise did not reach the customer, taxpayer assumed the loss; (2) if the order was filled with substituted goods, the taxpayer could return them; (3) the customer could return the goods if not satisfied with them. It has been held that these factors in effect render the sales local sales at the order offices or desks. *Montgomery Ward & Company, Inc. v. State Commission of Revenue and Taxation*, 133 Pac. (2d) 1008 (Kansas 1943); *Montgomery Ward & Company, Inc. v. State*, 175 S. W. (2d) 218 (Texas 1943).

This conclusion finds support in the authorities dealing with the inclusion of such sales in income tax allocation formulas, which are pertinent here by analogy. In *Watson*, "allocation of business income for State Income Tax Purposes," 25 Minn. L. Rev. 851, appears the following:

"The statutes or regulations of many states assign sales a situs in the state in which the business activity chiefly conducting to such sales may be said to be localized. Thus, sales are often considered to have a situs within the state if 'made through or by offices, agencies or branches' located within the state. . . . It may be observed that the statutory provisions of this majority [18] of states are essentially similar in that they localize sales at an office or agency from which emanate the activities producing the sales. This localization may be described as that of office situs. . . . Under the office situs rule those activities of a seller customarily centered at the sales office, which are designed to induce customers to purchase, are selected and made the criterion. These activities are obviously material economic factors in the making of a sale. . . ."

I accordingly advise that in my opinion the proposed assessments may validly be made.

INCOME TAXES; DEDUCTIONS OF CONTRIBUTIONS TO CIVIL AIR PATROL;
DEDUCTION OF EXPENSES INCURRED IN CONNECTION WITH
DISCHARGING DUTIES AS MEMBER OF CIVIL AIR PATROL

29 May, 1944.

You inquire whether there may be legally deducted from the gross income of a taxpayer in order to arrive at net income taxable under the Revenue Act the following items: contributions by individuals or corporations to the Civil Air Patrol; expenses incurred by a member of the Civil Air Patrol in discharging his duties.

Deductions for contributions are governed by Section 322(9) of the Revenue Act which is as follows:

"9. Contributions or gifts made by individuals, firms, partnerships and corporations within the income year to corporations, trusts, community chests, funds, foundations, or associations organized and operated exclusively for religious, charitable, literary, scientific, or educational purposes or for the prevention of cruelty to children or animals, no part of the net earnings of which inures to the benefit of any private stockholder or individual: Provided, that in the case of such contributions or gifts by corporations and partnerships, the amount allowed as a deduction hereunder shall be limited to an amount not in excess of five (5%) per centum of the corporation's or partnership's net income, as computed without the benefit of this subdivision; and provided that in the case

of such contributions or gifts by individuals, the amount allowed as a deduction shall be limited to an amount not in excess of ten (10%) per centum of the individual's net income, as computed without the benefit of this section."

It is my opinion that the Civil Air Patrol is not an organization "organized and operated exclusively for religious, charitable, literary, scientific, or educational purposes" and therefore that contributions to the Civil Air Patrol are not deductible under North Carolina law.

Section 322(1) of the Revenue Act sanctions the deduction of "all the ordinary and necessary expenses paid during the income year in carrying on any trade or business. . . ." According to the information that I now have, membership in the Civil Air Patrol is not a trade or business but is a voluntary connection for which no compensation is paid. If this is true, expenses incurred by a member in discharging his duties would not be deductible.

I find no other provisions in the Revenue Act which would permit such deductions.

It has been called to my attention that the Federal Government allows the deduction by individuals of contributions to the Civil Air Patrol to the extent that they do not exceed 15 per cent of the taxpayer's net income as computed without the benefit of the deduction for contributions; and that corporations may make such deductions to the extent that they do not exceed 5 per cent of the net income of said corporations. However, it is important to note that this ruling of the Federal Government is based upon provisions of the Federal law which are not found in the State law. Section 23(o)(1) of the Internal Revenue Code allows the deductions of contributions by individuals to "the United States . . . for exclusively public purposes" subject to the 15 per cent limitation referred to above. Section 23(q) of said Code allows a similar deduction to corporations within the 5 per cent limitation referred to above. The State of North Carolina has no such provisions in its Revenue Act, and I therefore know of no legal authority by which you may allow the deductions in question.

The deductions claimed seem to be for a very worthy purpose and one which attracts my sympathy. However, the Revenue Act was written prior to the advent of war and does not provide for many situations which have arisen since war began. I regret that I cannot advise that these deductions are permissible.

INCOME TAX; MILLER-JONES COMPANY, COLUMBUS, OHIO

31 May, 1944.

You have referred to me the letter of Miller-Jones Company of May 22, 1944, with reference to the method to be used by this taxpayer in reporting its income for taxation to the State of North Carolina. The taxpayer requests that it be allowed to report its income on a separate accounting basis.

The income tax schedule of the Revenue Act provides for the allocation to this State of the net income of a foreign corporation according to the formulas therein set forth. No provision is made

for separate accounting. Only in those cases in which a court would find that the application of the statutory formula results in the taxation in this State of more income than is reasonably attributable to this State is the Commissioner justified in departing from the formula.

The Hans Rees case referred to by the taxpayer did not hold that the formula in itself is invalid. It merely held that as applied to Hans Rees & Sons the formula seemed to apply with too great a burden. The question of the validity of the formula must be answered in the light of the facts of each particular case. The courts have clearly stated that the burden of showing an unconstitutional burden is upon the taxpayer. Further, the courts have clearly said that an approximation arrived at by the formula will be upheld and that exact measurement is not required.

In an address made to the Chicago Tax Club by Mr. James B. Dye on November 19, 1943, it was pointed out that the United States Supreme Court has in later decisions modified the Hans Rees case by implication and that while "formulas may still be held to be arbitrary and may still be found to be void for taxing income not earned within the state . . . it would appear that the type of proof or evidence as accepted in the Hans Rees case and the Standard Oil case is no longer regarded as sufficient." Mr. Dye made the following observation regarding separate accounting:

"Separate accounting, regardless of its accuracy, is insufficient to disprove the reasonableness of a formula; . . . under existing decisions, if a formula is to be successfully attacked the proof must be of a type as will tend to show (1) that the formula adopted and applied fails to recognize or show all of the elements or phases of the taxpayer's business within and without the state, and (2) that some special fact or situation exists with respect to the activities of the corporation within a given state which does not exist elsewhere with respect to the corporation's activities which clearly and definitely effects that company's income within that state and which particular situation is not recognized in the formula.

"Even such a showing, if made, will not now in most instances permit the corporation to revert to separate accounting as a basis for its returns."

I share these conclusions and advise that in my opinion this taxpayer has not shown facts which would justify a departure from the statutory formulas.

INCOME TAX; SECTION 322(6) OF THE REVENUE ACT

3 June, 1944.

Section 322(6) of the Revenue Act, which deals with the deduction of losses from gross income in determining net income, contains the following provision:

"A taxpayer shall be allowed to deduct losses in connection with the sale of securities only to the extent of the security gains during the income year, unless such losses resulted from the sale of stocks or bonds held by the taxpayer for a period of two years or more prior to the sale of such stocks or bonds."

You have requested my opinion upon whether treasury notes of the United States of America and promissory notes secured by mortgages and properly to be classed as "securities" within the meaning of this section.

I am informed that this provision was placed in the Revenue Act to prevent the deduction of losses in connection with wash sales of stocks and bonds listed and traded on the New York Stock and Curb Exchange.

The wording of this provision is somewhat broader than the declared intent.

"Securities" has been defined for legal purposes as follows in 56 C. J. 1278, et seq.:

(1) "*In General*. A general term for evidences of debt, of indebtedness, or of property, as a bond or certificate of stock; instruments evidencing title to or interest in property; promises to pay money; written assurances for the return or payment of money."

(2) "*In Commercial Parlance*. In common commercial parlance the term is understood to refer to live and negotiable commercial obligations, such as are considered generally safe or secure; but the word is said to be a flexible one, or to have a flexible meaning, and to be largely used in a wider or different sense, and in particular it is widely used in the sense of 'investment'; although what the word means in any particular instrument must depend mainly upon the construction of that instrument. . . ."

(3) "*What the Term Includes*. The term being generic, includes in its broadest sense, or in its ordinary acceptance, every interest or right, whether legal or equitable, absolute or contingent, attached to, or which is a charge upon specific property, or which entitled the owner thereof to be paid out of specific property; so that it has been held to include bills of exchange; bonds, for the payment of money; certificates of stock, or of deposit; deposits in savings banks, or in savings departments of trust companies; freeholder and groundrents; gold and silver certificates, and notes of the United States; promises to pay money; promissory notes, and other evidences of debt, or indebtedness, or of property, such as stocks, common and preferred; and stock, funds, and shares. . . ."

Thus, it will be seen that the term "securities" is capable of being very broadly construed. In my opinion there are at least two reasons why it should not be broadly construed:

(1) The known legislative intent that it should apply to sales of stocks and bonds traded on the stock market and the curb market; and (2) the fact that this provision is a limitation upon the deduction of losses and, as an exception or limitation in the paragraph relating to losses, must be given a strict and narrow construction under well known principles of statutory interpretation.

I recommend that at the next General Assembly this provision be reworded so as to express its true intent.

In the meantime I advise that you adopt the following construction with reference to notes and mortgages;

(1) *Notes*.—In my opinion notes of the Treasury of the United States and of a county or municipality are within the proper scope of the terms “securities” and “stocks or bonds.” It is clear that such notes may properly be classed as securities since they are purchased and treated as such. While such notes are not stocks, they may be embraced within the term “bonds.” See 11 C.J.S., page 398. The phrase “stocks or bonds” generally calls to mind government obligations which are traded widely. I, therefore, think that you may properly construe notes of a governmental unit to be securities or “stocks or bonds” within the meaning of this provision.

(2) *Mortgages*.—I understand that the practice in the Department of Revenue has been to exclude mortgages from the terms “securities” and “stocks or bonds,” and hence to allow the deduction of losses arising from the sale of mortgages even though there were no like gains from the sale of securities or if the mortgages had been held less than two years. In my opinion this construction is justified. There are no established markets for the sale of mortgages such as there are for the sale of stocks, bonds and governmental notes and it was not intended that mortgages be placed within the scope of this provision.

I understand that one taxpayer who had security losses is contending that these losses may be deducted to the extent of gains from the sale of mortgages. I agree that the deduction should not be allowed, because to allow it would be to interpret mortgages as “securities” and it is my opinion that the legislature never intended such an interpretation.

SECTION 122; LIABILITY OF CORPORATION CARRYING ON DREDGING
OPERATIONS IN NAVIGABLE WATERS OF THE STATE UNDER
CONTRACT WITH FEDERAL GOVERNMENT

5 June, 1944.

You inquire whether a corporation engaged in dredging work in navigable waters of North Carolina under a contract with the Federal Government is liable for the bidders' and project taxes imposed in Section 122 of the Revenue Act of 1939, as amended.

The taxes in question are imposed upon “Every person, firm, or corporation who, for a fixed price, commission, fee, or wage, offers or bids to construct within the State of North Carolina any building, highway, street, sidewalk, bridge, culvert, sewer or water system, drainage or dredging system, electric or steam railway, reservoir or dam, hydralulic or power plant, transmission line, tower, dock, wharf, excavation, grading or other improvement or structure, or any part thereof, . . .” Clearly, the type of project is included within the purview of the statute. The corporation, however, protests payment of the tax for the reasons that (1) it is operating under contract with the Federal Government, and (2) all of the work takes place in navigable waters.

It is well settled that independent contractors with the Federal Government are not immune from non discriminatory state excise taxes. *Silas Mason Co. Inc. v. Tax Commission*, 82 L. Ed. 154; *James v. Dravo Contracting Co.*, 82 L. Ed. 125; *Atkinson v. State Tax Comm.*, 82 L. Ed. 440. Therefore, the mere fact that the dredging corporation operates under contract with the Federal Government would not in itself exempt it from payment of the tax in question.

The next question is whether North Carolina has territorial jurisdiction to levy the tax.

In a statement presented by the taxpayer, it is shown that the dredging operations were carried on in navigable parts of the Neuse, Pamlico, and Pasquotank rivers, the Pamlico and Albemarle sounds, the Channel between Ocracoke and Ocracoke Inlet, and in an area called Harvey's Point. Reference to the map discloses that all of these waters are within the territorial limits of North Carolina. All waters within the land boundaries of a state, as well as those which are within one marine league of its coast are subject to state sovereignty. 59 *Corpus Juris* 57. The statement also shows that it was necessary for the dredging corporation at times to use docks outside of the navigable area for purposes of obtaining supplies and going ashore.

By virtue of certain provisions of the United States Constitution (Art. I, Par. 8, Article 3, Par. 2), all navigable waters are under the control of Congress in so far as commerce is concerned. This power is limited to control of such waters for purposes of navigation. *United States v. River Rouge Improvement Co.*, 269 U. S. 411; 45 *Corpus Juris*, Sec. 19. Subject to this paramount right of Congress, the several states have power to legislate concerning navigable waters within their territorial limits. *Port of Seattle v. Oregon & Washington Railroad Co.*, 255 U. S. 56, 45 *Corpus Juris* 20.

In *Susquehanna Co. v. Tax Commission*, 283 U. S. 291, which involved an ad valorem tax on real property, the court held that lands lying under navigable waters are subject to state taxation even though the waters above are subject to the control of the Federal Government in the exercise of its power over navigation.

Thus, if a state retains legislative jurisdiction over navigable waters, and may tax the lands lying thereunder, it seems clear that it may impose its taxes upon persons, firms or corporations engaged in carrying on dredging operations therein, and using docks and landing places situated within the state and outside of the navigable areas, provided such taxes do not interfere with Congress in its effort to control navigation. In my opinion, the imposition of the privilege tax levied in Section 122 of the Revenue Act does not amount to an interference with this federal function; and I therefore conclude that the dredging corporation is liable for the payment of the bidders and project license taxes.

INHERITANCE TAXES; REVENUE ACT, SECTION 11; TYPOGRAPHICAL ERROR

6 June, 1944.

You have referred to me a letter of May 23 from Mr. G. H. Valentine, regarding the above entitled estate. Mr. Valentine inquires the meaning of that portion of Section 11 of the Revenue Act which reads as follows:

"This section shall not apply to the proceeds of insurance policies transferred, by assignment or otherwise, during the life of the decedent if the transfer did not constitute a gift, in whole or in part, under Article VII, Schedule G, of this Act, *or in case the transfer was made at a time when Article VII, Schedule G, was not in effect, OR if the transfer would not have constituted a gift, in whole or in part, under said Article had it been in effect at such time.*" (Italic added.)

This paragraph which was inserted by a 1943 amendment was copied from the Federal Estate Tax law. See Internal Revenue Code, Section 811(g)(3). Unfortunately the amendment contains a typographical error and does not accurately transcribe the wording of the Federal act. The typographical error consisted of the insertion of the word "or," which is capitalized in the quotation above. This word should not appear in the act, as can be readily seen by comparing the Federal statute. At the next Legislature an amendment will be introduced to correct this obvious error.

In the meantime, the question arises as to the proper construction which should be given this provision. If I were to advise you that it should be construed as though the word "or" was intended to be in the act, I would be ignoring what I personally know to have been the legislative intent. It is my personal knowledge that the amendment was intended to insert in the North Carolina act the corresponding provision in the Federal act referred to above and I accordingly advise you that the section should be construed as though the word "or," which is capitalized in the quotation above, were not in the act.

The Court has laid down the principle that "the heart of a statute is the intention of the lawmaking body." *Atlas Supply Co. v. Maxwell*, 212 N. C. 624; *Dyer v. Dyer*, 212 N. C. 620.

Further, the Court has said that it is "fully established that where a literal interpretation of the language of a statute will lead to absurd results, or contravene the manifest purpose of the Legislature, as otherwise expressed, the reason and purpose of the law shall control and the strict letter thereof shall be disregarded." *State v. Barksdale*, 181 N. C. 621.

In *Fortune v. Commissioner*, 140 N. C. 322, appears the following:

"The use of inapt, inaccurate or improper terms or phrases will not invalidate the statute, provided the real meaning of the Legislature can be gathered from the context or from the general purpose and tenor of the enactment. Clerical errors or misprisions which, if not corrected, would render the statute unmeaning or incapable of reasonable construction or would defeat or impair its intended operation, will not necessarily vitiate the act, for they

will be corrected, if practicable. Nor will mere inadvertences or omissions have that effect, provided they can be supplied by reference to the context *or to other statutes*, and the true reading of the statute made obvious and its real meaning apparent." (Italic added.)

INCOME TAXES; NO DEDUCTION FOR DECLARED VALUE EXCESS
PROFITS TAX

21 June, 1944.

You inquire whether a taxpayer in computing net income for income tax purposes may deduct the amount of the Declared Value Excess Profits Tax paid by the taxpayer to the Federal Government.

Section 322 (4) of the Revenue Act of 1939, as amended, authorizes the deduction of taxes paid or accrued during the income year, except income taxes, and others not pertinent here. The section further provides that " 'Income taxes' which are not allowed to be deducted under this section shall be construed to include taxes that are in fact based upon net income."

The Declared Value Excess Profits Tax is imposed in Section 600 of the Internal Revenue Code upon that portion of the net income of a corporation as is in excess of a certain per centum of the declared value of its capital stock. Even though, as the taxpayer points out, this tax is merely a penalty complement to the capital stock tax imposed in Section 1200 of the Internal Revenue Code, it is itself a tax upon net income. For this reason, it is my opinion that it is not a deductible item under subsection (4) of Section 322 of the Revenue Act.

OPINIONS TO COMMISSIONER OF AGRICULTURE

COTTON AND COTTON WAREHOUSES; INSURANCE ON COTTON; WAR DAMAGE INSURANCE

8 July, 1942.

In your letter of July 6, 1942, you inquire if the law requires you in addition to carrying fire insurance on cotton, which is stored in warehouses of the State Warehouse System, to carry war damage insurance on this cotton to the amount of its full value during the present emergency.

The statute relating to the duty of the Superintendent to keep such cotton insured is C. S. 4925(q). This statute provides in part:

"The Superintendent shall insure, or shall require the local manager to insure and keep insured for its full value upon the best terms obtainable, by individual or blanket policy, all cotton on storage."

Of course when the Legislature enacted this statute in 1921, the present emergency could not have been contemplated. It was not the intent of the Legislature at that time to require war damage insurance on cotton stored in warehouses in the State Warehouse System. However, the statute, by its terms, requires the Superintendent to insure at its full value all cotton on storage.

Under the language of this statute, I cannot be sure whether or not you are required to provide war risk insurance. To be on the safe side, it seems advisable to me that such insurance be provided. Whether this is to be done under a blanket or individual policy is within your discretion.

AGRICULTURE; REGISTRATION OF FEEDS; CORPORATIONS

14 July, 1942.

By a letter of July 13 you inquire if a subsidiary corporation is required to register feeds manufactured by it with the Department of Agriculture when the parent corporation also manufactures such feeds and registers them with the Department.

Section 4727, North Carolina Code of 1939 Annotated (Michie), reads in part as follows:

"Each and every manufacturer, importer, jobber, agent, or seller, before selling, offering or exposing for sale in this State any concentrated commercial feeding stuff, shall, for each and every feeding stuff bearing a distinguished name or trade-mark, file for registration with the Commissioner of Agriculture a copy of the statement required in Section 4724. . . ."

"Concentrated commercial feeding stuffs" is defined by Section 4726 as follows:

"The term 'concentrated commercial feeding stuffs' shall be held to include all feeds used for live stock, poultry, and other animals, except hays, straws, and corn stover, when the same are not mixed with other materials, nor shall it apply to the whole seeds or grains of cereals when not mixed with other materials."

A subsidiary corporation is not an agent of the parent corporation but is instead a separate legal entity. 1 Fletcher's Cyclopedia, Corporations (Permanent Edition 1931) Section 25. See, also, *Wheeler v. New York, N. H. and H. R. (Conn.)*, 153 Atlantic, 159 (1931); *Cannon Manufacturing Company v. Cudahy Packing Company*, 267 U. S., 334.

Since the subsidiary corporation referred to in your letter is not an agent of the parent corporation but is a separate legal entity manufacturing the feed stuffs referred to, I am of the opinion that it should also register the feed stuffs with the Department of Agriculture.

AGRICULTURE; MILK AUDIT LAW; REPORTS; RIGHT TO FURNISH
INFORMATION TO STATE HEALTH OFFICER

21 January, 1943.

You state in your letter that Dr. Carl Reynolds, State Health Officer, has requested information contained in the reports filed under the requirements contained in Chapter 162 of the Public Laws, 1941, known as the North Carolina Milk Audit Law, and you desire to know whether you should give the State Health Officer this information.

From an inspection of the North Carolina Milk Audit Law, I am unable to see any reason why you should not furnish the State Health Officer any information contained in the reports filed under the provisions of the Milk Audit Law, which might tend to assist the State Health Officer in carrying out the public health program in North Carolina.

AGRICULTURE; LINSEED OIL; INSPECTION FEES; APPLICATION OF
ARTICLE 13 OF CHAPTER 84 OF THE C. S.

24 March, 1943.

In your letter of March 19, 1943, you ask for my construction of Article 13 of Chapter 84 of the Consolidated Statutes of North Carolina.

In my opinion, Article 13 of Chapter 84 of the Consolidated Statutes was designed to protect the people of the State in their purchases of linseed oil and was not designed as a revenue raising law. This is borne out by the first portion of Section 4832, which reads as follows:

"For the purpose of protection of the people of the State from imposition by the fraudulent sale of adulterated or misbranded linseed oil or flaxseed oil. . . ."

By looking at the entire article, I am of the opinion that the Department of Agriculture should inspect linseed oil which is shipped into North Carolina for sale to individuals or corporations here, or which is shipped directly to the purchaser in North Carolina, the sale being consummated at the seller's point within this State. This is borne out by the last portion of Section 4845, which reads as follows, after specifying the amount of the inspection tax:

"which payment shall be made before the delivery of such oil to any agent, retail dealer or consumer in this State."

The theory that this article was designed to protect North Carolinians from being defrauded in purchases of linseed oil is buttressed

by the first line of Section 4840, which reads, "Every person who offers for sale or delivers to a purchaser. . . ."

Therefore, it is my opinion that the Department should inspect linseed oil and charge an inspection fee therefor, when the oil is shipped to this State to be sold and when the oil is sold to an individual in this State for use in this State and actually delivered to the individual at the seller's point within the State. No inspection fee should be charged where oil is sold to an individual and the sale is consummated at the seller's point outside the State of North Carolina.

WEIGHTS AND MEASURES; STATUTORY CONSTRUCTION

27 April, 1943.

In your letter of April 23, 1943, you request a ruling on whether or not Chapter 261 of the Public Laws of 1927, ratified March 9, 1927, an act to provide uniform weights and measures for North Carolina, repeals Chapter 26 of the Public-Local Laws of 1927, ratified January 29, 1927, which amended C. S. 3914 so as to change the fees of the standard-keeper of Guilford County.

Although the legislative purpose in enacting Chapter 261 of the Public Laws of 1927, as declared in Section 1, was to provide standard weights and measures for the State, and Section 23 repealed all laws and clauses of laws in conflict therewith, we cannot overlook the fact that the Legislature, at the same session, amended C. S. 3914 applicable only to Guilford County.

Two rules adhered to consistently by the Supreme Court of North Carolina in construing statutes are: (1) that all acts of the same session of the Legislature upon the same subject matter must be construed together under the doctrine of *in pari materia*; and (2) public, local and private acts are unaffected by any repugnant provision of a general law.

Applying these rules to the question being considered, we must conclude that while we may concede that Chapter 261 of the Public Laws of 1927 was intended to supersede C. S. 3914, the local modification of C. S. 3914 as to Guilford County, enacted by the Legislature at the same session that the Uniform Weights and Measures Act was passed, is still in full force and effect.

WAR BONUS; EMPLOYEES UNDER JOINT CONTROL OF FEDERAL AND STATE AGENCIES; TEACHERS' AND STATE EMPLOYEES' RETIREMENT SYSTEM; MEMBERSHIP

26 June, 1943.

You state in your letter that your office is a coöperative one maintained by the State and Federal Departments of Agriculture, and that you have three employees, to wit: Henry G. Brown, Glen F. Vogel and George T. Denton, whose salaries are paid partly by the State of North Carolina and partly by the Federal Government, and that the compensation from each source is paid directly to the employees.

It further appears from your letter that these employees serve under the United States Civil Service regulations as to hours, overtime pay, retirement deductions, war bond deductions, and govern-

ment grade salaries. You desire to know whether, in my opinion, these employees would be entitled to the war bonus as provided by the General Assembly of 1943, and whether, during the period of time they are employed on this basis, deductions should be made from that portion of the salary paid by the State under the provisions of the Teachers' and State Employees' Retirement Act.

Although these employees seem to be employed on a coöperative basis between the State of North Carolina and the Federal Government, they are in fact considered in the strict sense of the word as employees of the Federal Government. It appears that not only are these employees made amenable to all the Federal regulations covering employees of the Federal Government, but they are also accorded all benefits to which Federal employees generally are entitled, including over-time and retirement benefits. You informed me that deductions for Federal retirement as to these employees are made on the basis of the full salaries paid such employees and not on the basis of the amount paid by the Federal Government alone.

It, thus, seems to me that, although the State of North Carolina pays the larger percentage of the salaries of these employees, it has consented that they are to be considered as Federal employees with their salaries supplemented by the State of North Carolina.

The provisions of the Acts governing the payment of the war bonus to State employees only accord the privilege of receiving the war bonus to full-time employees of the State of North Carolina and its departments, institutions, boards and commissions, including public school teachers and other public school employees.

It is, therefore, my opinion that these particular employees would not be entitled to receive the war bonus so long as they remain in their present status.

It would also seem to follow that no deductions should be made from that portion of the salaries of these employees paid by the State of North Carolina to cover employees' contributions to the Teachers' and State Employees' Retirement System. If these employees became members of the Teachers' and State Employees' Retirement System prior to the time they were placed under the present setup, it is my opinion that no deductions should be made from that portion of their compensation which is paid by the State of North Carolina during the period of time that they retain their present status. If they were not members of the Teachers' and State Employees' Retirement System prior to the time they acquired their present status, it is my opinion that they were not entitled to membership in the Teachers' and State Employees' Retirement System. If any deductions have been made from their salaries during the period of time since they became employed under the setup above outlined, it is my opinion that the amount of such deductions should be returned to these employees. These employees are certainly not entitled to membership in the retirement setup of the Federal Government to the full amount of their salaries and also membership in the State Retirement System on that portion of the salaries paid by the State of North Carolina.

AGRICULTURE; COMMERCIAL FEEDING STUFFS; INSPECTION; RIGHT TO
INSPECT IN RAILWAY CARS

9 July, 1943.

You inquire as to whether, in my opinion, the Commisisoner of Agriculture, or his deputies, agents and assistants, have the right to inspect commercial feeding stuffs shipped into the State of North Carolina while said commercial feeding stuffs are still in the railway cars.

Section 4733 of Michie's North Carolina Code of 1939, Annotated, provides:

"The commissioner of agriculture, together with his deputies, agents, and assistants, shall have free access to all places of business, mills, buildings, carriages, cars, vessels, and packages of whatsoever kind used in the manufacture, importation, or sale of any concentrated commercial feeding stuff, and shall have power and authority to open any package containing or supposed to contain any concentrated commercial feeding stuff, and, upon tender and full payment of the selling price of said samples, to take therefrom, in the manner hereinafter prescribed, samples for analysis; and he shall annually cause to be analyzed at least one sample so taken of every concentrated commercial feeding stuff that is found, sold, or offered or exposed for sale in this state under the provisions of this article. Said sample, not less than one pound in weight, shall be taken from not less than ten bags or packages, or if there be less than ten bags or packages, then the sample shall be taken from each bag or package, if it be in bag or package form, or if such feeding stuff be in bulk, then it shall be taken from ten different places of the lot. The sample or samples taken shall be kept a reasonable length of time by the department of agriculture, and on demand a portion of such sample or samples shall be furnished to the manufacturer, importer, or jobber of his feeds for examination by the chemists or other experts of said manufacturer, importer, or jobber. The department of agriculture is hereby authorized to publish from time to time in reports or bulletins the results of the analysis of such sample or samples, together with such additional information as circumstances advise: Provided, however, that if such sample or samples as analyzed differ from the statement prescribed in section 4724 above, then, at least thirty days before publishing the results of such analysis, written notice shall be given of such results to the manufacturer, importer, agent, or jobber of such stock, if the name and address of such manufacturer, jobber, or importer be known: Provided further, that if the analysis of any such sample does not differ within reasonable limits from the statement prescribed in section 4724 above appearing upon the goods, the manufacturer shall be considered as having complied with the requirements of this article."

This section clearly gives the Commissioner of Agriculture, together with his deputies, agents and assistants, free access to cars used in the importation or sale of any concentrated commercial feeding stuff and authorizes the Commissioner and his deputies, assistants and agents to open any package containing or supposed to contain any concentrated commercial feeding stuff and to take therefrom samples for analysis.

The right of the State of North Carolina to make such inspection is strengthened by the decision of the United States Supreme Court, in the case of *Patatsco Guano Co. v. Board of Agriculture*, 171 U. S. 191, 43 L. Ed. 345.

It is therefore my opinion that the Commissioner of Agriculture and his deputies, agents and assistants would have the right to inspect concentrated commercial feeding stuffs while such feeding stuffs remain in the railway cars, for the purpose of ascertaining if said concentrated feeding stuffs comply with the North Carolina law relating thereto.

AGRICULTURE; INSPECTION AND SAMPLING OF GOVERNMENT OWNED SEED
BY NORTH CAROLINA DEPARTMENT

5 August, 1943.

Receipt is acknowledged of your letter enclosing copy of a letter from Mr. Charles D. Lewis of the United States Department of Agriculture relative to the inspection and sampling of government-owned seed by the North Carolina Department of Agriculture. You desire to know whether, in my opinion, the North Carolina Department of Agriculture would be prohibited by the litigation between the United States of America and the Commodity Credit Corporation and the Commissioner of Agriculture of the State of North Carolina relative to the inspection of seed owned by the government.

From an inspection of the file in the case of *United States of America and Commodity Credit Corporation v. W. Kerr Scott, et al.*, the temporary restraining order signed by Judge Meekins restrained the defendants, their officers, agents, servants, employees and attorneys from taking any steps to enforce stop orders issued under the North Carolina Seed Law relating to peanut and soy bean seeds sought to be sold and distributed by or on behalf of the United States or the Commodity Credit Corporation, or to apply the provisions of the North Carolina Seed Law to the United States, the Commodity Credit Corporation, or any persons engaged in their behalf, in carrying on their program for the sale and distribution of peanut and soy bean seeds and from threatening to take such steps or from interfering or obstructing in any way the program of the United States and the Commodity Credit Corporation with respect to the sale and distribution of peanut and soy bean seeds.

Before the hearing on this injunction, the Board of Agriculture of the State of North Carolina, by resolution, ordered the stop sale orders theretofore issued to be withdrawn and agreed that no other steps should be taken by the Department of Agriculture to enforce the payment of inspection fees on the peanuts and soy beans referred to in the complaint. This resolution contains certain other material which is not pertinent to the question now under consideration. With this resolution as a basis and with the stipulation signed by the Attorney General to the effect that the acts complained of in the complaint had been abandoned and would not be continued, the action was dismissed without prejudice and without cost.

It is my opinion that the agreement as to the termination of the case above mentioned would not, within itself, prevent the North Carolina Department of Agriculture from testing seed owned by the United States Government or its agencies, at the request of the government or the agency distributing the seed, but the Department of Agriculture would have no right to impose any of the provisions of the North Carolina Seed Law and would not be authorized to enforce the findings of the Department by means of stop orders. All that could legally be done would be to make the test and report same to the United States Government or the agency owning the seed. Whether this should be done is a matter of policy which must of necessity be determined by the Board of Agriculture and the Commissioner.

GROWERS' PEANUT COÖPERATIVE; APPOINTMENT OF DIRECTORS

25 August, 1943.

I acknowledge receipt of your letter in which you state that the legislative Act under which this Coöperative was created provides that one or more directors shall be appointed by the Director of Agricultural Extension or other public official or commission. You inquire as to whether or not the Director of Agricultural Extension or other public official or commission of the State of Virginia, South Carolina or Tennessee has authority to name a public director for his respective State.

The pertinent section, 5259(s) (b), says:

"The by-laws shall provide that one or more directors shall be appointed by the Director of Agricultural Extension or any other public official or commission. The directors so appointed need not be members or stockholders of the association, but shall have the same powers and rights as other directors."

I do not think that the Legislature of the State of North Carolina has the authority to direct, authorize or empower any official or commission of any other State to perform any act or assume any duties or obligations, as such authority would be extra-territorial. I am, therefore, of the opinion that the director or other public official or commission mentioned in said section is restricted to a director or public official or commission of the State of North Carolina. A director or commissioner, therefore, of the State of Virginia, South Carolina or Tennessee would not have authority to appoint a director under said Section 5259(s) (b) of the Consolidated Statutes.

WEIGHTS AND MEASURES; STATUTORY CONSTRUCTION; EFFECT UPON
AMENDMENT OF REPEAL OF AMENDED LAW; STATUS OF PUBLIC-
LOCAL LAWS OF 1927, CHAPTER 26, REGULATING
FEES OF GUILFORD COUNTY

15 December, 1943.

In your letter of December 13, 1943, you have requested my opinion as to the status of Chapter 26 of the Public-Local Laws of 1943, which establishes a schedule of fees for the inspection and examination of weights and measures in Guilford County.

This Act purports to be an amendment to C. S., Sec. 3914. However, it is a special Act applicable only to Guilford County and rewrites Section 3914 completely in so far as that county is concerned.

In a previous opinion to you, dated April 27, 1943, I expressed the opinion that Public-Local Laws of 1927, Chapter 26, was not repealed by Chapter 261 of the Public Laws of 1927, which constitutes the general weights and measures law of North Carolina. Your present inquiry is concerned with the effect upon Chapter 26 of Chapter 543 of the Session Laws of 1943, which specifically repeals the section in the General Statutes of 1943, which corresponds to C. S., Sec. 3914.

Although Chapter 26 of the Public-Local Laws of 1927 is, in form, an amendment to C. S., Sec. 3914, it is, in substance, an independent Act regulating fees in Guilford County. The Act stands upon its own feet, is complete in itself, and can be understood and applied without reference to any of the provisions of C. S., Sec. 3914.

In my opinion it remains in full force and effect and is not repealed as a result of the repeal of the section of the General Statutes corresponding to C. S., Sec. 3914. Two rules of statutory construction support this conclusion. In the first place, repeals by implication are not favored and the Supreme Court of North Carolina has consistently held that a general Act does not repeal a special or local Act relating to the same subject matter, unless the special or local Act is expressly mentioned or a clear legislative intent to abrogate inconsistent legislation, whether general, special, or local, appeared. In addition, there is respectable authority to the effect that an amendment is not repealed by the repeal of the amended Act if the amendment is capable of standing alone.

In 1 Sutherland, Statutory Construction, 3rd Ed., p. 444, the author observed:

"However, if the amendatory Act adds a provision that is complete within itself it is not repealed by the repeal of the original Act."

The case of *State v. Young*, 30 S. C. 399, 9 S. E. 355, supports the rule above stated.

AGRICULTURE; SEED LAW; STOP SALE ORDERS

22 February, 1944.

Receipt is acknowledged of your letter of February 17 in which you inquire as to whether in my opinion a wholesale dealers has the right to take up and remove seed on which a stop sale order has been issued and whether the retail dealer who had the seed on hand and to whom the stop sale order was issued had a right to allow such removal.

Subsection (c) of Section 106-282 of the General Statutes of North Carolina authorizes the Commissioner of Agriculture or his authorized agents to issue stop sale orders which shall prohibit further sale of any lot of seed which the Commissioner or his authorized agent has reason to believe is being offered or exposed for sale in

violation of the provisions of the seed law until the law has been complied with or said violation otherwise legally disposed of.

Of course, the primary purpose of this particular provision is to prevent the lot of seed on which a stop sale order has been issued from being sold until said lot of seed has been made to comply with the provisions of the seed law. If the person, firm, or corporation to whom the stop sale order was issued should be allowed to remove the seed and deliver same to another concern who, in turn, would place the seed on the market, the effectiveness of the stop sale order would be entirely destroyed. There does not seem to be any specific criminal provision in the seed law relating to the removal of seed on which a stop sale order has been issued. There is, however, a provision which makes it a violation of the law to fail to comply with an order of the Commissioner or his authorized agent to withdraw from sale any seed which do not comply with the requirements of the said law and also making it a violation of the law to hinder or obstruct in any way any authorized person in the performance of his duties under the provisions of the seed law.

It is my opinion that any person with notice of a stop sale order who sells or aids and abets in the sale of any lot of seed on which a stop sale order has been issued would violate the provisions of the seed law.

I do not know exactly what methods you use in issuing stop sale orders but I would suggest that notices of the stop sale order be attached to each lot of seed in order that all persons might have notice that a stop sale order had been issued. I would suggest that the form of your stop sale order be amended so as to refer to the new seed law rather than the old one. I would also suggest that the stop sale order be so amended as to forbid all persons, firms, and corporations from selling or offering for sale the seed designated in the stop sale order until official notice to the contrary is received from the Department of Agriculture.

MUNICIPAL TAXATION; PRIVILEGE TAX ON FARMERS PRODUCING AND SELLING THEIR OWN MILK OR DAIRY PRODUCTS

10 March, 1944.

You state that the City of Kings Mountain has adopted an ordinance requiring all peddlers of milk or dairy products within the municipality to pay a license of \$10.00; that some dairies are operated by farmers who produce their own milk and sell it in Kings Mountain. You inquire whether such an ordinance is valid as applied to a person who produces milk on a farm and sells it in the municipality.

Section 121 of the Revenue Act, which levies a privilege tax upon peddlers, and which authorizes counties, cities, and towns to do so, specifically exempts from such tax persons selling or offering for sale "products of the dairy." This statute further provides that no county, city, or town shall levy any license tax "under this section" upon persons exempted thereby.

In *State v. Bridgers*, 211 N. C. 235, the Supreme Court considered a similar situation. In that case the defendant, who was an employee of a bakery located in another city, was indicted for engaging in the bakery business in Rocky Mount. The defendant relied upon the peddler's tax section of the Revenue Act, referred to above, which provided that a municipality should not levy any tax under said section upon peddlers of bakery and other products. However, the Court pointed out that the tax in that case was not levied under the authority of Section 121 of the Revenue Act but was levied under the general authority given the City of Rocky Mount in its charter and in Consolidated Statutes, Section 2677, to tax trades and businesses and that, therefore, the tax was valid.

In your inquiry you do not state whether the tax was levied by the City of Kings Mountain under the asserted authority of Section 121 of the Revenue Act. If so, such authority was insufficient since that statute specifically prohibits municipalities from taxing peddlers of dairy products. However, if such privilege tax was levied under the the charter of the City of Kings Mountain, authorizing the taxing of trades and businesses carried on within the corporate limits, or under the authority of G. S. 160-56 (formerly C. S. 2677), such tax would, in my opinion, be valid under the decision in *State v. Bridgers* referred to above.

AGRICULTURE; ANIMAL DISEASES; PUBLIC LIVESTOCK MARKETS;
FARMERS SELLING OWN ANIMALS

14 April, 1944.

You inquire as to my opinion on the extent of the exemption contained in the Public Livestock Market Act as applicable to farmers selling or offering for sale their own animals.

The main purpose of the Public Livestock Market Act is the prevention and control of animal diseases. The Act is applicable to all livestock sold in and through the facilities of a public livestock market.

G. S. 106-413, being Section 8 of the original Act, as amended, extends the provisions of the Act so as to require inspection, testing, vaccination, paint marking, identification with an ear tag and health certificate issued by a qualified veterinarian of all animals sold or offered for sale on any public highway, right-of-way, street, or within one-half mile of any public livestock market or other public place. This section also contains a proviso in the following language:

"Provided, that this provision shall not apply to animals raised and owned by a bona fide farmer who is a resident of the State of North Carolina and sold or offered for sale by him."

It is my opinion that this exemption only covers bona fide farmers who are residents of the State of North Carolina who sell their own animals in territory outside the public livestock markets and that it would have no application where the animals are sold through the facilities of the public livestock market rather than by the farmer

himself. It seems to me that what the General Assembly had in mind was to exempt bona fide farmers where they sell their own animals in places off the premises of a public livestock market, the reason behind the exemption being that under these circumstances there would not likely be any disease hazard due to the fact that in most instances only the animals of one farmer would be involved.

AGRICULTURE; ANIMAL DISEASES; BANGS DISEASE; COMPULSORY
TESTING

18 April, 1944.

You desire to know whether, in my opinion, the testing of cattle for bangs disease is compulsory in counties in which the boards of county commissioners have agreed to coöperate with the state and federal governments in carrying out the bangs disease program.

G. S. 106-394 (Section 7, Chapter 175, Public Laws 1937) provides that the several boards of county commissioners in the State are hereby expressly authorized and empowered within their discretion to make such appropriations from the general funds of their country as will enable them to coöperate effectively with the state and federal departments of agriculture in the eradication of bangs disease in their respective counties.

G. S. 106-395 (Section 8, Chapter 175, Public Laws 1937) provides that whenever a county board shall coöperate with the state and federal governments, the testing of all cattle in said county shall become compulsory and that it shall be the duty of the cattle owners to give such assistance as may be necessary for the proper testing of cattle and no cattle except for immediate slaughter shall be brought into the county unless accompanied by a proper test chart and health certificate issued by a qualified veterinarian showing that the cattle have passed a proper test for bangs disease.

It is my opinion that where a board of county commissioners of a particular county has taken the proper steps toward authorizing co-operation with the state and federal governments in the bangs disease eradication program, the testing of all cattle in the county becomes compulsory.

OPINIONS TO BUDGET BUREAU

WAR BONUS; APPLICATION TO EMPLOYEES WHOSE EMPLOYMENT TERMINATED PRIOR TO ENACTMENT OF THE LAW

11 March, 1943.

I have your letter of March 10, referring to Committee Substitute for S.B. 12 and the provisions of same with reference to the War Bonus as applied to employees who have resigned or who have been inducted into military service since January 1, 1943, and who were not in the State service at the time the Act was passed, in some cases.

This Act provides that the War Bonus shall be applied to the salaries of public school teachers for the last half of the public school year of 1942-43, and applied to the salaries of other State employees beginning January 1, 1943. There is a proviso that a regular teacher or other regular State employee who works less than the full period for which said bonus is prescribed shall receive only such proportionate part of the bonus as the period of service of such teacher or other employee is of the total period for which the bonus is prescribed.

It is my opinion that the bonus should be paid any teacher who was employed during the last half of the school year 1942-43, and, if not employed for the full period, for a proportionate part of the period for which such teacher was employed. As to other State employees, it is my opinion that the bonus should be paid to all employees who were in the State service after January 1, 1943, for the period of time of their service after that date, whether or not they were in the State employ at the time the Act was passed by the General Assembly. Under the provisions of the law quoted, such employee would be entitled to receive a proportionate part of the bonus as the period of service is of the total period for which the bonus is prescribed.

WAR BONUS; WORKMEN'S COMPENSATION ACT; EMPLOYEES RECEIVING COMPENSATION

25 March, 1943.

I have your letter of March 22, in which you advise that a question has arisen in connection with the payment of the War Bonus to employees who have been injured in line of duty and who are at the present time not drawing a salary but are being paid under the Workmen's Compensation Act. You inquire as to whether or not such employees are entitled to the benefits of the War Bonus.

While the employee is off the pay roll and not on active duty, by reason of injuries received by accident arising out of and in the course of employment, and is receiving Workmen's Compensation payments, such employee would not be entitled to the War Bonus. Under the Workmen's Compensation law, during the period for which Workmen's Compensation is paid, the employee receives sixty per cent of

the average earnings of the employee during the preceding year, except in circumstances which are unusual. These payments are made under the law in lieu of all other salary or compensation which the State had been paying such employee and would fix the limits for which compensation can be paid.

If an employee is injured after having served the period for which the War Bonus has been paid, the employee's salary and the War Bonus together would be considered in determining the earnings of the injured employee in the year preceding the disability. While the War Bonus is not a part of an employee's salary, it would be within the meaning of the Compensation Act, in my opinion, earnings which should be considered in fixing the basis for compensation.

PAYMENT OF WAR BONUS TO EMPLOYEES CERTIFIED ON A TEMPORARY BASIS

25 March, 1943.

I have your letter of March 22, with reference to the payment of War Bonus to the employees who have been certified on a temporary basis, but who later become permanent employees and are certified as such. Your question relates to whether or not you would be permitted to pay such employees the War Bonus for the period of service prior to being certified on the permanent basis.

Under the law, an employee can become a permanent employee and not on a temporary basis only when requested by the employing agency and certified by you as such. During the period of service in which the employee is acting on a temporary basis upon certification as a temporary employee by you, it is my opinion you would not be permitted to pay such employee the War Bonus, as the Appropriations Bills provide that the War Bonus is not to be paid to employees on a temporary or part-time basis. From and after the time that they are certified as being permanent employees, of course, the bonus would be paid as to any regular employees.

You mention the fact that the employees certified on the temporary basis have not become members of the Retirement System, which requires that all regular employees become a member of the same. As soon as an employee is certified as permanent, then the bonus would become applicable to his or her salary, and, from that time forward, the employee should be regarded as a member of the Retirement System and salary deductions made as required by the Act.

TEACHERS AND STATE EMPLOYEES RETIREMENT SYSTEM; MEMBERSHIP;
PERMANENT EMPLOYEE; WAR BONUS; CORRECTION OF
CLERICAL ERROR IN CERTIFICATION OF STATUS

26 March, 1943.

You state in your letter of March 24 that there are a few employees of the State who have actually been on a permanent basis for several months but who, due to a clerical error, have been certified as temporary employees. You desire to know whether, in my opinion,

these employees should have been members of the Teachers and State Employees Retirement System from the date they actually became permanent employees and if they are otherwise eligible, whether they would be entitled to the benefits under the War Bonus Act.

Under the provisions of the Teachers and State Employees Retirement Act, all persons who became teachers or State employees after July 1, 1941, had no choice as to whether they became members of the Retirement System. Each employee who entered the State service after said date and who was considered as a full-time employee, as distinguished from a part-time or purely temporary employee, is required to make contributions to the Teachers and State Employees Retirement System.

Therefore, the employees about whom you inquire should have begun to make contributions to the Retirement System on the date they were actually placed on a permanent basis and the fact that a purely clerical error was made in the certification cannot change their status. In my opinion, you would be authorized to correct the clerical error in their certification so as to make such certification speak the truth.

It is also my opinion that these employees, if they comply with the other provisions of the War Bonus Act, would be entitled to the benefits provided for in said Act.

WAR BONUS; EMPLOYEES OF EDUCATIONAL INSTITUTIONS NOT
EMPLOYED ON AN ANNUAL BASIS

29 March, 1943.

I have your letter of March 27, referring to the conference had with reference to the War Bonus to be paid to employees of State institutions who are not employed upon an annual basis but who are employed for no definite period, except from week to week or from month to month.

I am of the opinion that the phrases "other public school employees" and "other employees of other educational institutions paid by the State," found in the provisions of the Appropriations Act of 1943 with reference to the War Bonus, have reference to employees who are employed on a fiscal or school year basis and do not refer to employees hired by the week or by the month. The purpose of including the provisions from which these phrases are taken in the Appropriations Acts was to insure that teachers and other State employees, who are employed on a fiscal or school year basis but who receive their compensation paid over a shorter period of time, would receive on account of their services the same War Bonus as paid to other State employees who serve throughout the entire year and are paid in regular installments throughout the year.

Other employees of the public schools or State institutions who are employed and are paid by the month should receive the War Bonus on the same basis as State employees who do not work for the public schools or educational institutions. I believe that this was the purpose of the provisions in the Acts.

WAR BONUS; PERMANENT EMPLOYEES CERTIFIED ERRONEOUSLY AS
TEMPORARY

29 March, 1943.

I wish to confirm the verbal advice given to you to the effect that employees of State institutions who were employed for work of a permanent character and as permanent employees but who had been, at the request of the Retirement Commission, treated as temporary employees for the purpose of eliminating a large number of refunds when these employees change jobs, which occurs frequently in this type of employment, are entitled to the War Bonus. It is my opinion that these employees should be treated as members of the Retirement System as of the date they were employed.

This conclusion will make it necessary that deductions be made from the compensation of these employees for the amounts required to be paid into the Retirement Fund by them as of the date of their original employment.

SUBSISTENCE ALLOWANCES FOR EMPLOYEES OF STATE INSTITUTIONS

24 April, 1943.

Receipt is acknowledged of your letter of April 20, in which you ask my opinion as to proper subsistence allowances for officers and employees at State institutions, as to which you state some confusion exists.

The Personnel Act, C. S. 7521(n), provides that the Assistant Director of the Budget, after making the investigation required by the preceding sections, shall fix, determine and classify the necessary number of subordinates and employees in all departments and bureaus and, with the approval of the Advisory Budget Commission, "fix, establish and classify a standard of salaries and wages with a minimum salary rate and a maximum salary rate and/or such intermediate salary rate or rates as may be deemed necessary and equitable, to be paid for such services and positions and to all such subordinates and employees of said departments and bureaus."

This section also provides that the Assistant Director of the Budget "shall also fix, determine and establish the hours of labor in such department and/or bureau and make all such rules and regulations with respect to holidays, vacations or sick leave, and any and all other matters having direct relationship to services to be performed and the salaries and wages to be paid therefor as shall be approved as herein provided for."

C. S. 7521(o) requires a report to be made to the Governor, and C. S. 7521(p) provides that when the report has been filed with the Governor and the head of "such department or bureau," the findings in such report shall then become the fixed standard for the salaries or wages to be paid, etc.

It is my opinion that, under the statutes referred to, the regulation of subsistence allowances for officers and employees of State institutions, in any case which is not otherwise fixed by statute, is a part of the functions and duties of the Assistant Director of the Budget.

Each biennial maintenance appropriation bill has carried a provision reenacting the provisions of the Personnel Act, which includes C. S. 7521(n) and other sections referred to herein. This reenactment is found in Section 21 of the Appropriations Act for 1943-1945.

TEACHERS AND STATE EMPLOYEES RETIREMENT SYSTEM; MEMBERSHIP;
MEMBERS OF BOARD AND EMPLOYEES OF BOARD OF
BARBER EXAMINERS

9 June, 1943.

You inquire as to whether the members of the Board of Barber Examiners and the employees of such board are entitled to membership in the Teachers and State Employees Retirement System.

Subsection 4 of Section 1 of Chapter 25 of the Public Laws of 1941, known and designated as the Teachers and State Employees Retirement Act, defines the word employee to mean all full-time employees, agents, or officers of the State of North Carolina or any of its departments, bureaus and institutions, other than educational, whether such employees are elected, appointed or employed.

It is my opinion that the members of the Board of Barber Examiners and the employees of the board would come within the definition of employee as set out in the Teachers and State Employees Retirement Act.

STATE BOARD OF BARBER EXAMINERS; SALARIES OF BOARD MEMBERS;
ELIGIBILITY FOR WAR BONUS

23 June, 1943.

You inquire as to whether in my opinion the members of the State Board of Barber Examiners and the personnel employed by the Board would be eligible to the benefits provided for in that portion of the appropriations act authorizing the payment of the war bonus.

Chapter 53 of the Session Laws of 1943 provide that effective June 30, 1943, the Secretary of the State Board of Barber Examiners shall turn over, to the State Treasurer to be credited to the State Board of Barber Examiners, all funds collected or received by him under the act creating the Board and the amendments thereto and that such funds are to be held and expended under the supervision of the Director of the Budget exclusively for the enforcement and administration of the provisions of the act, with the provision that no expenditure in excess of the amount available from time to time in the hands of the State Treasurer derived from fees collected under the provisions of the act shall be authorized. This act further provides that the members of the Board of Barber Examiners shall each receive an annual salary of \$3,000.00 payable in equal monthly installments.

The Board is authorized to employ such agents, assistants and attorneys as it may deem necessary.

Under the provisions of Chapter 530 of the Session Laws of 1943, the General Assembly provided a war bonus for all full-time employees of the State and its departments, institutions, boards and commissions, these war bonuses to be for the fiscal year 1943-1944 and for the first half of the fiscal year 1944-1945, until December 31,

1944. The appropriations made to the departments, institutions, boards, commissions and public schools contain the amounts sufficient to provide a war bonus to public school teachers and state employees in accordance with the schedule set out in Section 17 of Chapter 530, and under the provisions of Section 17 the Director of the Budget is authorized, empowered and directed to allocate out of the highway and public works fund, the agriculture fund, and other special operating funds employing personnel, the amount sufficient to meet the war bonus in accordance with the schedule contained in said section and for the period specified therein.

From an inspection of the portion of Chapter 530 relating to the war bonus, it is clear that the General Assembly did not intend that such war bonus be considered as a salary increase but rather as a specified amount to be paid during the present emergency on account of increased cost of living, etc. This is borne out by the fact that it is provided that no deductions shall be made from the amount represented by the war bonus under the provisions of the teachers and state employees' retirement act, which requires a deduction on the total amount of the salary of each employee, who is on a full time basis.

It therefore appears to me that even though the General Assembly fixed the salaries of the members of the Board of Barber Examiners, this action on the part of the General Assembly would not prevent the members of the Board from receiving other benefits to which they might be entitled under the law, provided such benefits would not be considered as additional salary.

It appears to me that on July 1, 1943 the funds collected under the provisions of the Act creating the State Board of Barber Examiners, as amended, became a special fund within the meaning of that portion of Section 17 of Chapter 530 of the Session Laws of 1943 authorizing the Director of the Budget to allocate out of special operating funds employing personnel, the amount sufficient to meet the payment of the war bonus in accordance with the schedule and for the period provided for in Section 17.

I assume that it was the intention of the Legislature, in fixing the salaries of the members of the Board of Barber Examiners, to place such members on a full time basis and it would necessarily follow that they would be considered as full time employees. It is therefore my opinion that the members of the Board of Barber Examiners and all the employees of the Board who are employed on a full time basis would be entitled to the benefits of the war bonus as provided for in Chapter 530 of the Session Laws of 1943.

NORTH CAROLINA STATE BOARD OF COSMETIC ART; ELIGIBILITY OF
EMPLOYEES FOR WAR BONUS; EFFECTIVE DATE

25 June, 1943.

You inquire as to whether in my opinion the employees of the North Carolina State Board of Cosmetic Art would be eligible to receive the war bonus and, if so, whether the payments should begin on July 1, 1943 or as of January 1, 1943.

Section 2 of Chapter 354 of the Session Laws of 1943, which rewrites Section 15 of Chapter 179 of the Public Laws of 1933, as amended, provides, in part:

"The said board shall on, or before June first of each year, submit a budget to the Director of the Budget for the ensuing fiscal year, which shall begin July first of each year. The said budget so submitted shall include all estimated receipts and expenditures for the ensuing fiscal year including the estimated compensation and expenses of board members. The said budget shall be subject to the approval of the Director of the Budget and no expenditures shall be made unless the same shall have been set up in the budget adopted by the Board of Cosmetic Art Examiners, and approved by the Director of the Budget of the State of North Carolina; that all salaries and expenses in connection with the administration of this Act shall be paid upon a warrant drawn on the State Treasurer, said warrants to be drawn by the secretary of the board and approved by the State Auditor."

"That the provisions of the Executive Budget Act and the Personnel Act shall fully apply to the administration of this Act."

"There shall be annually made by the Auditor of the State of North Carolina a full audit and examination of the receipts and disbursements of the State Board of Cosmetic Art Examiners. The state board shall report annually to the Governor a full statement of receipts and disbursements and also a full statement of its work during the year."

Section 5 of this Act provides:

"This Act shall be in full force and effect from and after June 30, 1943."

Under the provisions of Chapter 530 of the Session Laws of 1943, the General Assembly provided a war bonus for all full-time employees of the State and its departments, institutions, boards and commissions, these war bonuses to be for the fiscal year 1943-1944 and for the first half of the fiscal year 1944-1945, until December 31, 1944.

Chapter 530 is the appropriations act for the two fiscal years ending June 30, 1943 and June 30, 1945. The appropriations made to the departments, institutions, boards, commissions and public schools contain the amounts sufficient to provide a war bonus for the benefit of public school teachers and State employees in accordance with Section 17 of Chapter 530. Under the provisions of this section, the Director of the Budget is authorized, empowered and directed to allocate, out of the Highway and Public Works fund, the agricultural funds, and other special operating funds employing personnel, the amount sufficient to meet the war bonus in accordance with the schedule contained in said section, and for the periods set out therein.

It is my opinion that on July 1, 1943, the funds collected under the provisions of Chapter 179 of the Public Laws of 1933, as amended, become a special operating fund within the meaning of that portion of Section 17 of Chapter 530 of the Session Laws of 1943, authorizing the Director of the Budget to allocate out of special operating funds employing personnel the amount sufficient to meet the payment of

the war bonus in accordance with the schedule, and for the periods provided for in Section 17.

It is, therefore, my opinion that all the full-time employees of the North Carolina State Board of Cosmetic Art would be eligible for the war bonus beginning July 1, 1943. It is further my opinion that these employees would not be entitled to receive the war bonus for any period prior to July 1, 1943. It is true that under the provisions of Chapter 531 of the Session Laws of 1943, the General Assembly made certain supplemental appropriations out of the general fund of the State for the State's departments, bureaus, institutions and agencies, for the specific purpose of providing a war bonus for public school teachers and other State employees for a portion of the fiscal year ending June 30, 1943. As applicable to State employees, the period designated was from January 1, 1943 to the end of the fiscal year. Under the provisions of this Act, the Director of the Budget was authorized and directed to allocate, out of special operating funds employing personnel, the amount sufficient to meet the war bonus in accordance with the schedule contained in this Act. However, at the time of the ratification of this Act, the fund from which the employees of the North Carolina State Board of Cosmetic Art were paid was not a special operating fund within the meaning of Chapter 531 and, if this is true, it would follow that the Director of the Budget had no jurisdiction over the fund at that time and was not authorized and empowered to make any allocation with reference to the payment of the war bonus. Prior to July 1, 1943, the Director of the Budget has no control over the employees of this Board. At the time the funds of the Board became a special operating fund, the provisions of Chapter 530 of the Session Laws of 1943 will be in effect and the time for the application of the provisions of Chapter 531 will have expired.

It is, therefore, my opinion that the Director of the Budget would have no right to allocate funds from this special operating fund to cover the amount necessary for the payment of the war bonus to the employees of the North Carolina State Board of Cosmetic Art for any period prior to July 1, 1943.

TEACHERS AND STATE EMPLOYEES RETIREMENT SYSTEM; EMPLOYERS'
CONTRIBUTION; BURIAL ASSOCIATION COMMISSIONER

5 August, 1943.

You inquire as to whether in my opinion the Director of the Budget would be authorized to allocate out of the funds realized under the provisions of Chapter 130 of the Public Laws of 1941, as amended, an amount sufficient to cover employers' contributions as to employees in the Department of the Burial Association Commissioner, without regard to the \$25,000.00 limit provided in said chapter, as amended.

Chapter 130 of the Public Laws of 1941 placed all mutual burial associations under the supervision of a burial associations' commissioner, to be appointed by the Governor of the State of North Carolina. The burial associations' commissioner was authorized to levy certain

assessments against all mutual burial associations and to collect certain license fees enumerated in said chapter. The fees provided for in said chapter, as distinguished from the assessments, are to be used for the supervision of the burial associations in the State.

Section 16 of Chapter 530 of the Session Laws of 1943 provides that the Director of the Budget is authorized, empowered and directed to allocate, out of the highway and public works fund and the agricultural fund and other special operating funds employing personnel, the amount sufficient to meet the contributions necessary to be made in order to comply with the Act creating the teachers and State employees retirement system.

This office has heretofore rendered an opinion to the effect that the funds collected by the burial associations' commissioner would come under the provisions of the Executive Budget Act. It is therefore my opinion that the money collected under the provisions of Chapter 130 of the Public Laws of 1941, as amended, and deposited with the State Treasurer, would be a special operating fund within the meaning of Section 16 of Chapter 530 of the Session Laws of 1943.

Of course, under the provisions of Article 13 of Section 4 of Chapter 130, Public Laws of 1941, as amended by Section 2 of Chapter 272 of the Session Laws of 1943 and Section 3 of Chapter 272 of the Session Laws of 1943, it is provided that a limitation of \$25,000.00 be placed on the expense of operation and supervision. However, it is my opinion that the Director of the Budget, in acting under the authority contained in Section 16 of Chapter 530 of the Session Laws of 1943, would not be bound by this limitation in providing the employers' contribution to the State teachers and employees retirement system, if a sufficient amount is in the State Treasury to the credit of the burial associations' commissioner to provide for such employers' contribution.

OPINIONS TO UTILITIES COMMISSION

SEARCH AND SEIZURE; WIRE TAPPING; AUTHORITY OF MUNICIPAL COURT TO REQUIRE THE TAPPING OF TELEPHONE WIRES

3 July, 1942.

In a letter of June 13, from Mr. Robbins Tilden, Secretary-Treasurer of the North State Telephone Company, addressed to your office, an inquiry is made as to the authority of the Municipal Court of High Point to authorize the tapping of telephone wires. The problem presented is one that has not been decided by the courts of North Carolina.

The municipal courts of North Carolina have only the power and authority inherent in such courts or which is granted to them by statute. There is no statute in North Carolina giving the Municipal Court of High Point authority to authorize the tapping of a telephone wire. Is this, then, a power which is inherent in municipal courts?

In my opinion, an order by the Municipal Court of High Point to "tap" the telephone wires leading to the homes of citizens must be considered on the same basis as a search warrant. True, it has been held that the tapping of telephone wires and obtaining evidence thereby did not amount to an unreasonable search and seizure as these terms are used in the Fourth Amendment to the Federal Constitution. *Olmstead v. United States*, 277 U. S., 348. However, conceding that the tapping of wires does not amount to a search or a seizure, I am of the opinion that the authority of a court to issue an order directing that certain wires be tapped (if a court has such authority), would necessarily spring from and be connected with the authority to issue search warrants. It must be an exercise of the authority of a court which permits premises, persons, etc., to be searched.

Considering the order as the exercise of a power related to the issuance of a search warrant, I am of the opinion that the Municipal Court of High Point is without authority to issue it. While warrants to search for stolen goods are authorized by the common law, *State v. McDonald*, 14 N. C., 469 (1822), the widespread use of search warrants today is authorized by statute. Sections 4530, 3411(1), 3380, 4473, 2141(x), 2141(y), and 3411(f), of the North Carolina Code (Michie, 1939). There is also the right to search an individual and his immediate surroundings when that individual is lawfully arrested. *State v. Fowler*, 172 N. C., 905 (1916), *State v. Simmons*, 183 N. C., 684 (1922), *State v. Goddette*, 188 N. C., 497 (1924). None of these statutes or decisions give a court authority to issue an order directing that certain telephone wires be tapped. On the contrary, it has been said that a telephone company cannot disclose the contents of a message to a person other than addressee without the consent of the sendee, or at least the sender or sendee. See *Barnes v. Telegraph Company*, 156 N. C., 150 (1911). The statutes of North Carolina make it unlawful for any person to wrongfully obtain or attempt to obtain any knowledge of a telephone message by connivance with a clerk, employee, etc., of a telephone company. North Carolina Code

(Michie, 1939), Section 4497. This same section makes it unlawful for an employee, etc., of a telephone company to willfully divulge a telephone message to anyone other than the person for whom it was intended.

In view of the expressed policy of the laws of North Carolina against divulging telephone messages, and the lack of statutory authority for a court to issue an order to tap telephone wires, I am of the opinion that the Municipal Court of High Point would have no authority to issue such an order or warrant.

COUNTY TAXES; EXEMPTION OF CITY ELECTRICAL PLANTS AND LINES

4 June, 1943.

I acknowledge receipt of your letter, enclosing a letter from Honorable William Dunn, City Attorney of New Bern, as to whether or not Lenoir County has a right to tax electric lines owned by the City of New Bern and extending into Lenoir County.

You state that you are of the opinion that such lines are subject to taxation by Lenoir County, and I concur with you in your opinion.

I am enclosing herewith a copy of a letter dated August 1, 1939, to Mr. M. L. Laughlin, County Auditor, Tarboro, North Carolina, giving the basis of my opinion.

OIL TRUCK OPERATIONS; LIABILITY AND PROPERTY DAMAGE INSURANCE

29 June, 1943.

You inquire whether certain oil truck operators who hold no franchise certificates from the Utilities Commission, and operate with contract tags purchased from the Motor Vehicle Department, but who voluntarily file their tariffs with the Commission and agree to adhere strictly to the tariffs so filed, can be required by the Commission to carry liability and property damage insurance.

Section 6 of Chapter 36 of the Public Laws of 1927, as amended (Section 2613(o) of Michie's 1939 N. C. Code), provides that the Commission shall require applicants for franchise certificates to procure and file with the Commission acceptable liability and property damage insurance. It also provides that "brokers," defined in the Motor Carriers Act to include persons providing transportation for compensation, shall be required to file bond to cover financial responsibility not in excess of amounts required by the Interstate Commerce Commission.

I am unable to find any statute which would authorize the Commission to require that oil truck operators not operating under franchise certificates carry liability and property damage insurance, and I do not believe that such authority may be reasonably implied from powers granted the Commission. It is, therefore, my opinion that the Utilities Commission is not empowered to require oil truck operators not operating under franchises to carry liability and property damage insurance.

The desirability of protecting the public from the hazards of this type of transportation is a matter which you may desire to refer to the next General Assembly.

OPINIONS TO INSURANCE COMMISSIONER

REVENUE ACT SECTION 208(2), STATUTE OF LIMITATIONS ON REPORTING PREMIUMS FOR COMPUTATION OF PREMIUM TAXES

23 November, 1942.

You request my opinion upon the following matter:

The Mutual Benefit Health and Accident Association, during the years 1940 and 1941, reported to you membership fees collected from all policy holders as a basis for the computation of the franchise tax levied by Section 210(2) of the Revenue Act of 1939, as amended. However, this Association failed to report said fees for the years prior to 1940. You inquire concerning the liability of the Association for taxes on membership fees not reported prior to 1940.

It is a general principle of law that in the absence of statutory provisions to the contrary statutes of limitation do not run against the sovereign. See *Wilmington v. Cronly*, 122 N. C. 389.

I have been unable to find any provision in the Revenue Act which would limit the time with respect to the collection by the State of the taxes due thereunder. However, Section 420 of the Consolidated Statutes is as follows:

"Sec. 420. *Applicable to actions by state.*—The limitations prescribed by law apply to civil actions brought in the name of the state, or for its benefit, in the same manner as to actions by or for the benefit of private parties. (Rev., s. 375; Code, s. 159; C. C. P., s. 38.)"

Thus, while there is no specific statutory provision which would limit the State in the collection of franchise taxes which have not been reported, it is probable that in an action by the State to recover the unreported taxes the defendant, by virtue of C. S. 420, might plead the limitations provided for by C. S. 445, which is ten years.

I am of the opinion that you may validly assess the taxpayer in this case with the unreported franchise taxes for a period of ten years from the date of assessment.

HOSPITAL SERVICE CORPORATIONS MAY NOT INCLUDE SURGICAL FEES UNDER THE PROVISIONS OF CHAPTER 338 OF THE PUBLIC LAWS OF 1941

4 February, 1943.

I acknowledge receipt of your letter of January 29, setting out certain facts relating to bringing Hospital Service Corporations under the provisions of Chapter 338 of the Public Laws of 1941 when they include in their contracts "a medical service plan."

A corporation organized under the provisions of the referred to Act would be limited in types of service contracts entered into with its clientele by the provisions of the Act, and is not authorized to enter into any contracts covering services other than those specifically set out in the Act.

It is my opinion that Section 3 of the Act limits the types of contracts which a corporation organized under the provisions of the Act may enter into to "hospital service" contracts covering hospital bed and board, operating or delivery room fees, anesthetic, drugs, etc., and such corporation is not authorized by said Act to enter into contracts with its clientele covering "a medical service plan," which would embrace the furnishing of medical, obstetrical, surgical and/or other professional services by licensed physicians.

It is, therefore, my opinion that a corporation organized under the provisions of Chapter 338 of the Public Laws of 1941 is not authorized by said Act to enter into contracts providing for the payment of medical, surgical, obstetrical and/or other professional services to be furnished by a duly licensed physician.

It occurs to me that if a Hospital Service Corporation is to be permitted to furnish the medical, surgical or obstetrical services of a licensed physician, Chapter 338 of the Public Laws of 1941 should be amended so as to specifically cover this type of service. It occurs to me that the amendment to the Act which we have discussed would take care of this situation and bring it under the provisions of the Act, and would authorize non-profit Hospital Service Corporations to enter into contracts to furnish "medical service plans" for medical, obstetrical or surgical professional services.

INSURANCE; HEALTH AND ACCIDENT; LICENSE FEES

13 April, 1943.

You inquire whether or not a protective association engaged in the *health and accident* insurance business should be construed as being engaged in more than one class or kind of insurance to the extent to require such association to pay more than one license fee under the provisions of Section 208 of Chapter 158 of the Public Laws of 1939, known as the "Revenue Act."

Said Section 208 requires the payment of a license fee of \$200.00 by "an accident or health insurance company or association."

Section 6320 of the Consolidated Statutes among other things provides that "no insurance company admitted to do business in the State shall be authorized to transact *more than one class or kind* of insurance therein, unless it pays the license fees for each class." This section goes further and states that no insurance company may be required to pay license fees amounting in the aggregate to more than \$350.00 per annum.

Section 6327 of the Consolidated Statutes provides:

"Insurance companies, associations, or orders may be formed as provided in the two next succeeding sections for any one of the following purposes:

4. *Sickness*.—Against disability resulting from sickness and every insurance appertaining thereto.

5. *Accident*.—Against injury, disablement, or death resulting from traveling or general accident and every insurance appertaining thereto."

It seems clear to me that under Section 6327 the Legislature classed sickness (health) insurance and accident insurance as two entirely different and separate classes or kinds of insurance, as these two classes of insurance are numbered separately and are defined each under its respective number. Section 208 of the Revenue Act does not define what a health or accident policy is, but merely says a health or accident company, necessitating referring back to Section 6327 for a definition and classification of accident or health companies, where we find them placed in two separate classes or kinds of insurance and defined as two different classes or kinds.

I understand it is the practice of a health and accident company to write either a "health and accident policy" or a separate health policy or a separate accident policy, or it may write one without including the other, and a separate fee or premium is charged for each class, one for a health policy and one for an accident policy. This indicates to me that such companies consider a health policy and an accident policy, not as one policy, but as two separate classes of insurance.

I further understand that most if not all of such companies doing business in the State of North Carolina have already paid the maximum fee of \$350.00, but that one company has questioned your right to charge that sum.

I am of the opinion that the type of company above referred to is engaged in more than one class or kind of insurance and that as Insurance Commissioner of the State of North Carolina, you are justified in requiring such company to pay the maximum fee of \$350.00 for engaging in more than one class or kind of insurance. If such insurance company is of the opinion that it should not pay such fee, it should be required to pay the same under protest, and it may later bring suit to recover such fee or so much thereof as it may consider excessive.

DISCRIMINATION BETWEEN INSURANTS; LIFE INSURANCE COMPANY MAY ALLOW DISCOUNT ON PREPAID PREMIUMS

7 August, 1943.

I acknowledge receipt of your letter in which you state that a life insurance company allows a discount of 4 per cent on premiums paid in advance for the second and third annual premiums and thereafter a discount of 1 per cent on all prepaid premiums but that a holder of a policy two years old or older is permitted a discount of only 1 per cent. You state for example that a policyholder purchased a policy in 1928 and now wishes to prepay premiums for a period of 17 years and, under the practice followed by the company in question, would be entitled to a discount of 1 per cent for each year, whereas if the policy had been purchased in 1942 the assured could prepay the premiums and receive a discount of 4 per cent for two years and 1 per cent for the remaining 15 years.

You inquire as to whether or not in my opinion the practice followed by this company is discriminatory under the provisions of Section 6458 of the Consolidated Statutes.

I have given careful study to the contents of your letter and its relation to said Section 6458 of the Consolidated Statutes, which, in part, says:

"A life insurance company doing business in this state shall not make any distinction or discrimination in favor of *individuals* between insurance of the *same class*. . . ."

It seems to me that under the quoted section of the statute the express provision and obvious purpose and policy of the statute are to prevent discrimination between the policyholders of a *like class* and *expectancy*. It does not seem to me that the practice followed by the company in question discriminates within the class of policyholders but that all policyholders within each class are entitled to the same discount on prepaid premiums.

I am therefore of the opinion that the practice followed by the life insurance company in question is not discriminatory under the provisions of Section 6458 of the Consolidated Statutes.

INSURANCE; COMPENSATION RATING AND INSPECTION BUREAU NOT
SUBJECT TO SECTION 6391, C. S.

3 September, 1943.

I acknowledge receipt of your letter in which you inquire as to whether or not the Compensation Rating and Inspection Bureau of North Carolina is subject to the general regulations relative to rate making companies, and if so, is the said Bureau subject to the restrictions imposed by Section 6391 of the Consolidated Statutes as to discrimination between risks of essentially the same hazard?

Sections 6388 through 6394 of the Consolidated Statutes gives to the Insurance Commissioner certain regulatory control over rate making companies, and Section 6388 requires every corporation, association, board or bureau which now exists or hereafter may be formed for the purpose of suggesting, approving or making rates to be used by more than one underwriter for insurance, to file with the Insurance Commissioner a copy of the *articles of agreement, association or incorporation, and the by-laws and amendments thereto*, under which such person, association or bureau operates and such other things as may be requested by the Insurance Commissioner.

In order to bring the Compensation Rating and Inspection Bureau under the provisions of Section 6391, we must first determine whether or not the said Compensation Rating and Inspection Bureau is covered by Section 6388.

The Compensation Rating and Inspection Bureau of North Carolina is not a private corporation, association, board or bureau, but is a quasi-governmental agency created by Chapter 279 of the Public Laws of 1931, as amended by Chapter 76 of the Public Laws of 1935. I am of the opinion that Section 6388 relates only to private corporations, associations, boards or bureaus, since the latter part of said section requires that a copy of the articles of agreement, association or incorporation, etc., of such bureau shall be filed with the Insurance Commissioner.

I, therefore, conclude that since the Compensation Rating and In-

spection Bureau of North Carolina was created by an Act of the Legislature, it is not such a bureau as is required to comply with Section 6388, and having reached that conclusion, I am of the opinion that it is not subject to the provisions of Section 6391.

However, I do think that the Compensation Rating and Inspection Bureau of North Carolina is subject to the provisions of Section 8081(cccc), which provides that no policy of insurance against liability for compensation under the Workmen's Compensation Act shall be valid until the rate thereof has been approved by the Commissioner of Insurance, and which prohibits any such carrier of insurance to write any such policy or contract until its basic merit rating schedule has been filed with, approved, and not subsequently disapproved, by the Commissioner of Insurance.

BUILDING AND LOAN ASSOCIATIONS; LOANS LIMITED TO MEMBERS OF
ASSOCIATION

19 October, 1943.

You inquire as to whether or not a building and loan association may purchase mortgages executed by various mortgagors to mortgage corporations or other third parties securing loans made by them. I understand that some of the building and loan associations of the State desire to invest a part of their funds in purchasing such mortgages and plan to require the mortgagors to become shareholders in their respective associations as a condition precedent to purchasing the same.

I find no statutory authority permitting a building and loan association to purchase mortgages of the character under consideration. Their power to make real estate loans is limited to making loans to their respective members.

Section 5169 of the Consolidated Statutes, in defining the term "building and loan associations" and purposes for which they may be organized, says:

"The term 'building and loan associations' as used in this subchapter apply to and include all corporations, companies, societies, or associations organized for the purpose of making loans to *its members only*, and of enabling its members to acquire real estate, make improvements thereon and remove encumbrances therefrom by the payment of money in periodical installments and . . . it shall be unlawful for any corporation, company, society or association doing business in this State not so conducted to use in its corporate name term 'building and loan association' or 'building association,' or . . . to hold themselves out to the public as a building and loan association."

It will be observed that this section defines the purpose of a building and loan association as that of making loans to its members only, to enable them to buy real estate, make improvements thereon, and remove encumbrances therefrom.

Section 5182 is even more restricted as to the class of persons to whom loans may be made by providing:

"No loans shall be made by such association to anyone not a member thereof."

The last sentence of Section 5182(a) says:

"No association shall make any loan upon this plan to any person unless he be a member of such association."

In my opinion, a building and loan association, by purchasing a mortgage held by a third party, would not be making a loan to one of its members within the meaning of the pertinent sections of the Consolidated Statutes even though such person becomes a member before the transfer of the loan to the association.

It will be further observed that Sections 5182 and 5182(a) require certain stipulations and terms to be included in the written instrument even when the loan is made to a member. I doubt that the mortgages proposed to be purchased by building and loan associations from third parties contain the required conditions and terms.

I, therefore, conclude that a building and loan association, in making loans, is restricted to making them to its own members and does not have authority to purchase mortgages or similarly secured indebtedness from third parties, even though the mortgagor becomes a member of the association.

While it may necessitate some expense, it seems to me that the better course to pursue is for the mortgagor in each case to apply for a new loan from the building and loan association, and out of the proceeds of such loan satisfy all outstanding encumbrances.

INSURANCE; FILING OF MORE THAN ONE RATE BY COMPENSATION RATING
AND INSPECTION BUREAU

28 December, 1943.

I acknowledge receipt of your letter relative to the above subject, and from your letter and conversation with you, I understand that the Compensation Rating and Inspection Bureau of North Carolina has filed with you, on behalf of its stock members, a schedule of rates which has been approved by you, and has filed on behalf of its non-stock members a schedule of rates which has not as yet been officially approved. I understand that the stock members of the Bureau do not object, but agree that it is desirable to have a different schedule of rates approved for the non-stock members from that which has been approved on behalf of stock members.

You inquire: "If under the provisions of Section 73 of Chapter 120 of the Public Laws of 1929 and Chapter 279 of the Public Laws of 1931 of the State of North Carolina, the Commissioner of Insurance has the authority (1) to order any group of insurance companies to use Workmen's Compensation insurance rates which have not been filed with the Insurance Department on behalf of or for the use of such companies; and (2) to approve a Workmen's Compensation insurance rating program which produces different rates for stock insurance companies from non-stock insurance companies, assuming that such a program is otherwise satisfactory."

In my letter to you of September 3 I expressed the opinion that Sections 6388 through 6394 of the Consolidated Statutes, giving certain

regulatory control to the Insurance Commissioner over rate making companies, are not applicable to the Compensation Rating and Inspection Bureau created by Chapter 279 of the Public Laws of 1931, since such Bureau is a quasi governmental agency and Sections 6388-6394 are intended to regulate private corporations, associations, boards, and bureaus.

The authority of the Insurance Commissioner over rates charged by carriers of insurance writing insurance against the liability for compensation is contained in Section 8081(cccc):

"8081(cccc). Rates for insurance; carrier to make reports for determination of solvency; tax upon premium; returned or cancelled premiums; reports of premiums collected; wrongful or fraudulent representation of carrier punishable as misdemeanor; notices to carrier; employer who carries own risk shall make report on payroll. The rates charged by all carriers of insurance, including the parties to any mutual insurance association writing insurance against the liability for compensation under this article, shall be fair, reasonable, and adequate, with due allowance for merit rating; and all risks of the same kind and degree of hazard shall be written at the same rate by the same carrier. No policy of insurance against liability for compensation under this article shall be valid until the rate thereof has been approved by the Commissioner of Insurance; nor shall any such carrier of insurance write any such policy or contract until its basic and merit rating schedules have been filed with, approved, and not subsequently disapproved by the Commissioner of Insurance."

There is no provision in the above quoted section empowering the Commissioner of Insurance to order or direct any group of insurance companies to use any particular schedule of rates which has not been filed on behalf of the carriers to which it is applicable.

I am, therefore, of the opinion that you do not have the authority to order any group of insurance companies to use Workmen's Compensation insurance rates which have not been filed with the Insurance Department on behalf of such companies. Section 8081(cccc) does not empower you to fix the rates to be used by Workmen's Compensation carriers, nor does it authorize or prohibit you from approving more than one schedule of rates, one schedule applicable to stock companies and one applicable to non-stock companies. Said section does give you wide discretionary powers over rates since it provides that no policy of insurance against liability for compensation under the Workmen's Compensation Act shall be valid until the rate thereof has been approved by the Commissioner of Insurance, and prohibits any such carrier of insurance to write a policy or contract until its basic and merit rating schedule has been filed with, approved, and not subsequently disapproved, by the Commissioner of Insurance. It will thus be seen that you have ample authority to reject any schedule of rates which you do not consider fair, reasonable, and adequate.

I am, therefore, of the opinion that you may approve one schedule of rates applicable to stock company carriers of Workmen's Compensation insurance, and a different one for non-stock insurance carriers.

INSURANCE; HAIL INSURANCE RATES MUST BE UNIFORM AND NOT
DISCRIMINATORY

27 April, 1944.

I acknowledge receipt of your letter in which you state that agents writing hail insurance for fire companies sometimes accept cash for premiums of one customer and, in other instances, take non-interest bearing notes representing the premium, and in still other instances, accept notes bearing interest from date, covering such premiums. You inquire as to whether or not this would be considered discriminatory.

I am of the opinion that under Section 58-128, an agent writing hail insurance may not charge cash to some of his customers and accept non-interest bearing notes from others, while requiring interest bearing notes from others of his customers. Such agents should either adopt the policy of accepting cash or, in lieu thereof, non-interest bearing notes, or should adopt a policy of requiring cash or interest bearing notes from all of his customers. In other words, he must deal with all of his customers alike so that the rate of premium shall be the same upon the same class of risks to all customers and he may not discriminate as to rates between the same risks by requiring some to give interest bearing notes while others are required to give notes without interest.

INSURANCE LAWS; IMPROVED ORDER OF RED MEN COMES WITHIN
EXCEPTION IN SECTION 58-291 OF THE NORTH CAROLINA
GENERAL STATUTES

15 May, 1944.

I acknowledge receipt of your letter setting out certain facts relating to the Improved Order of Red Men (Red Men's Benefit Company), and stating that the death benefit department pays through its tribes and councils to its members upon death benefits of \$250.00 and \$500.00 to beneficiaries of deceased holders of Class "A" and Class "B" certificates. You state that in your opinion this organization comes within those societies excluded from supervision by the State Insurance Department.

I agree with you in your conclusion, since Section 58-291 specifically provides:

"Nothing contained in this article shall be construed to affect or apply to societies which limit their membership to any one hazardous occupation, nor to any association of local lodges of a society now doing business in this State which provides death benefits not exceeding five hundred dollars (\$500.00) to any one person. . . ."

Even though it has been the policy of your Department in the past to exercise supervision over this organization, I am of the opinion that upon investigation by you, if you find that this society comes within the quoted exception to Section 58-291, you should relieve it from any further supervision by your Department. See *Boney, Insurance Commissioner v. Odd Fellows*, 200 N. C. 331.

You inquire if it is determined that this organization is not subject to supervision by the State Insurance Department, whether or not it is entitled to a refund of the license fees paid by it over the past years?

I refer you to Section 105-407 of the North Carolina General Statutes, which provides:

"Whenever taxes of any kind are or have been through clerical error, or misinterpretation of the law, or otherwise, collected and paid into the state treasury in excess of the amount legally due the state, the state auditor shall issue his warrant for the amount so illegally collected, to the person entitled thereto, upon certificate of the head of the department through which said taxes were collected or his successor in the performance of the functions of that department, with the approval of the attorney general, and the treasurer shall pay the same out of any funds in the treasury not otherwise appropriated: Provided, demand is made for the correction of such error or errors within two years from the time of such payment."

EFFECT OF ADOPTION OF NORTH CAROLINA BUILDING CODE ON PRIOR
STATUTES IN CONFLICT THEREWITH

24 June, 1944.

You have made a request of this office for an opinion as to what effect the "North Carolina Building Code," drafted and promulgated by the North Carolina Building Code Council in 1936, and adopted and ratified by the General Assembly of 1941 by reference thereto, has on sections in the General Statutes of 1943 that may be in conflict with provisions of said Code.

Admittedly, this question is a moot one. Calling to our aid, however, several well-established rules for statutory construction, we conclude that in adopting and ratifying the Building Code the intention of the General Assembly was for the regulations therein contained to supersede prior laws governing the same subject matter.

The pertinent part of the adopting clause is as follows:

"The provisions of said 'North Carolina Building Code' so published are hereby in all respects ratified and adopted and shall continue in full force and effect unless and until they may be modified as hereinafter authorized: . . ." G. S. 143-139.

Corroborating the apparent intent of the Legislature is the following language found in Section 143-138 of the same Article:

"It shall be the duty of the Insurance Commissioner or his deputy or deputies in cooperation with local officials in accordance with Sections 160-115 to 160-123, inclusive, to enforce the Building Code hereinafter ratified and adopted, and all rules and regulations which the Building Code Council is authorized to promulgate in modification or addition to said Building Code under the authority of this Article, . . ."

And Section 143-143 provides a penalty "If any employer, owner or other person shall violate any of the provisions of this Article, . . . upon conviction thereof shall be fined in any sum not less than ten

dollars (\$10.00) nor more than fifty dollars (\$50.00) for each offense. Each seven days neglect shall constitute a separate and distinct offense."

The weight of authority seems to be that such an adoption and ratification by reference is not repugnant to legislative policy in general. "The adoption of an earlier statute by reference makes it as much a part of the adopting statute as though it had been incorporated at full length." 50 Am. Jur., Statutes, § 38; *Engel v. Davenport*, 271 U. S. 33, 70 L. ed. 813, 46 S. Ct. 410; *Ludlow v. Johnson*, 3 Ohio 553, 17 Am. Dec. 609. Our Courts have shown a disposition to follow this policy in the many opinions sustaining the validity of descriptions in deeds by reference to other recorded deeds.

If the Building Code does not have such force of law as to supersede prior laws in conflict with it, then it is difficult to assign to it any efficacy at all and the conclusion must follow that the Legislature has done a vain and meaningless thing. In *Peoples Bank v. Loven*, 172 N. C. 666, 90 S. E. 948, the Court said:

"The General Assembly is presumed to have acted advisedly and with a knowledge of the meaning of language and of existing law, and it will never be assumed, if any other conclusion is permissible, that it has done a vain or meaningless thing."

The Building Code was established as a public safety measure, and the authorities seemed to be in accord with the view that a liberal construction should be given laws of this nature. Speaking on the same subject, we quote from *I Horack*, Statutes and Statutory Construction (1943), § 314:

"Thus in the field of public health, safety and morals general and indeterminate standards of policy have usually been sustained and wide discretion has been left to administrators." *Commonwealth v. Sessoms*, 189 Mass. 247, 75 N. E. 619.

And our own Courts have said:

"Laws for the protection of the health, morals and safety of society within the police power should be given such a construction as will suppress the mischief aimed at." *State v. Lipkin*, 169 N. C. 265, 84 S. E. 340; L.R.A. 1915 F. 1018, Anno. Cas. 1917 D, 137.

To the same effect is this entry in American Jurisprudence:

"As in the case of all statutes, the primary rule of construction of statutes entitled to a liberal interpretation is to ascertain and declare the intention of the Legislature, as gathered from the language used. It is, however, especially true of statutes entitled to a liberal construction, that an interpretation should be applied which is within reason and spirit of the statute or public policy which animates it, rather than the strict letter thereof. . . . The statutes should not be given a construction so technical or narrow as to defeat the beneficent purposes or design of the statute, or the right granted by it." 50 Am. Jur., Statute, § 386.

Therefore, as previously said, it is our opinion that the Building Code, subject to the provisions and limitations provided by law, supersedes those statutes, enacted prior to its adoption, which contain clauses in conflict therewith.

OPINIONS TO ADJUTANT GENERAL

STATE GUARD; WORKMEN'S COMPENSATION; INJURY WHILE LEAVING HOME FOR DRILL

3 May, 1943.

Receipt is acknowledged of your letter of May 1, in which you furnish me the information with reference to the injuries sustained by Dillard G. Poplin, Private, a member of the 25th Company of the North Carolina State Guard. You advise that, in compliance with proper orders to assemble at the armory with his command for a test blackout on February 23, 1943, while leaving his home, tripped on his own doorstep, falling and breaking his right leg below the knee and at the ankle. You advise that the accident has been reported to the North Carolina Industrial Commission on forms provided by them. You ask my opinion as to whether or not this accident is compensable under the North Carolina Workmen's Compensation Act.

As pointed out by you, this accident occurred on February 23, 1943, which was prior to the enactment of the amendment adopted at the General Assembly of 1943, making members of the North Carolina State Guard subject to the provisions of the Workmen's Compensation Act. The amendment adopted in 1943 is not retroactive and would not be applicable to this case.

There might be some question as to whether or not members of the State Guard, which was organized under the provisions of Chapter 43 of the Public Laws of 1941, would, independent of the amendment adopted in 1943, be considered as entitled to the benefits of the Workmen's Compensation Act. Section 6 of the said Chapter 43 provides that the North Carolina State Guard shall be subject to the military laws of the State not inconsistent with or contrary to the provisions contained in this article, with certain exceptions, none of which are pertinent to this question except C. S. 6889 which provided for certain compensation for the members of the State military organizations.

Under the law, no compensation is paid to members of the State Guard who serve as volunteers. It is entirely possible that the Industrial Commission would hold that members of the State Guard, prior to the enactment of the 1943 amendment, were not within the terms of the Act.

An accident having happened to Private Poplin while leaving his own home and by falling on his own doorstep, would not be compensable because it did not arise out of or in the course of his employment. It is generally held that injuries received by an employee while going and coming from his home to his work are not compensable for the reason that such accidents are common to the general public and are not occasioned by any peculiar hazard of his employment. In the case of *Hunt v. State*, 201 N. C. 707, the Industrial

Commission and our Supreme Court held that a member of the National Guard who was injured while traveling in his own automobile to an encampment was not entitled to compensation. This, I think is a similar case. See also, *Lockey v. Cohen, Goldman & Co.*, 213 N. C. 356, and cases cited therein.

Therefore, it seems to me, for the reasons stated, that the injuries received by Private Poplin are not compensable and that it would be your duty to deny liability for compensation.

TAXATION OF PURCHASES OF THE STATE GUARD

26 May, 1943.

You inquire whether purchases of equipment and supplies, including gasoline, made by units of the State Guard from local funds allocated to them for official purposes are subject to federal and state taxes.

Article V, Schedule E, of the Revenue Act of 1939, as amended, levies a tax of 3 per cent upon the sale of tangible personal property in this State, and Article IX, Schedule I, levies a tax of 3 per cent upon the storage, use, or consumption of tangible personal property in this State, to be paid if no sales tax has been paid with respect to the purchase of such property. Section 406, Subsection (d), of the Revenue Act provides that the sales tax shall not apply to sales made to the State of North Carolina or any of its subdivisions, and Section 803 of the Revenue Act makes the same exemption applicable to the use tax. Since the State Guard is an agency of the State of North Carolina, being authorized by statute, I am of the opinion that sales of equipment and supplies, other than gasoline, purchased to be used exclusively for carrying on the official duties of any unit of the State Guard are not subject to the retail sales tax or use tax. It should be noted, however, that purchases by officers or men of the State Guard for personal or unofficial purposes would be taxable.

A State tax of six cents per gallon is imposed upon the sale, distribution, or use of gasoline by Chapter 93 of the Public Laws of 1927, as amended. The Act contains no provision exempting State agencies from the payment of this tax. Therefore, the State Guard must pay this tax just as any other State agency.

The Federal Government imposes no tax on purchases generally; there are, however, various manufacturers and retailers excise taxes levied on certain articles. As a general rule no Federal excise tax attaches to articles sold to the several states or their agencies if such articles are to be used exclusively in performing a governmental function, provided the exempt character of the sale is established as required by regulations of the Bureau of Internal Revenue. See Sections 2406 and 3442 of the Internal Revenue Code, and regulations issued thereunder.

The exemptions from the federal taxes are available only if exemption certificates in substantially the following form are filled out and filed with the vendors at the time of purchase.

"Exemption Certificate for Retailer's Excise Tax.

....., 19.....
(Date)

The undersigned hereby certifies that he is.....

(Title of Officer)

of the State of North Carolina and that he is authorized to execute this certificate and that the article or articles specified in the accompanying order or on the reverse side hereof, are purchased from

(Name of company)

.....of the State of North Carolina.

(Governmental Unit

It is understood that the exemption from tax in the case of sales of articles under this exemption certificate to the State of North Carolina is limited to the sale of articles purchased for their exclusive use, and it is agreed that if articles purchased tax free under this exemption certificate are used otherwise or are sold to employees or others, such fact will be reported and tax paid by me to the collector of internal revenue for the district in which the sale was made. It is also understood that the fraudulent use of this certificate to secure exemption will subject the undersigned and all guilty parties to a fine of not more than \$10,000, or to imprisonment for not more than five years, or both, together with costs of prosecution.

.....(Signature)

(Title of officer)"

"Exemption Certificate of Manufacturer's Excise Tax.

....., 19.....
(Date)

The undersigned hereby certifies that he is.....

(Title of officer)

of the State of North Carolina and that he is authorized to execute this certificate and that the article or articles specified in the accompanying order or on the reverse side hereof, are purchased from

(Name of company)

.....of the State of North Carolina.

(Governmental Unit

It is understood that the exemption from tax in the case of sales of articles under this exemption certificate to the State of North Carolina is limited to the sale of articles purchased for their exclusive use, and it is agreed that if articles purchased tax free under this exemption certificate are used otherwise or are sold to employees or others, such fact will be reported by me to the manufacturer of the article or articles covered by this certificate. It is also understood that the fraudulent use of this certificate to secure exemption will subject the undersigned and all guilty parties to a fine of not more than \$10,000, or to imprisonment for not more than five years, or both, together with costs of prosecution.

.....(Signature)

(Title of officer)"

DOUBLE OFFICE HOLDING; MEMBER OF SELECTIVE SERVICE BOARD,
SELECTIVE SERVICE DISTRICT APPEAL BOARD, AND APPEAL AGENT
ARE COMMISSIONERS FOR SPECIAL PURPOSE; ARTICLE XIV,
SECTION 7, STATE CONSTITUTION

ELECTION LAWS; MEMBER SELECTIVE SERVICE BOARD, SELECTIVE SERVICE
DISTRICT APPEAL BOARD, AND APPEAL AGENT MAY HOLD ELECTION
LAW OFFICES OTHER THAN REGISTRARS AND JUDGES

4 January, 1944.

You inquire if a membership on a United States Selective Service Board, or District Appeal Board, or a Selective Service Appeal Agent, is an office within the meaning of Article XIV, Section 7, of the State Constitution prohibiting double office holding, and you specifically inquire as to whether or not such a person may serve as an election official.

(1) Article XIV, Section 7, of the State Constitution prohibiting double office holding specifically exempts from its prohibitory provision officers of the militia, justices of the peace, commissioners of public charities, or *commissioners for special purposes*.

This office has written a number of opinions to the effect that membership on the various selective service boards, and appeal agent, even if considered as a public office, is exempt from the constitutional prohibition against double office holding for that such a person is a commissioner for a special purpose as contemplated by Article XIV, Section 7, and I base this opinion upon the holdings of the Supreme Courts of Georgia and Louisiana, which States have constitutional provisions similar to ours.

It is, therefore, my opinion that members of either a local or district selective service board or appeal agents may hold public offices at the same time they are serving in their respective capacities as members of the United States Selective Service Boards or Appeal Agents, unless the statute creating such offices specifically prohibits such persons from holding other offices.

(2) As to whether or not a member of the various United States Selective Service Boards may serve as an election official, I refer you to Section 163-11, G. S. (formerly Section 5924 of the Consolidated Statutes), and Section 163-15, G. S. (formerly Section 5928 of the Consolidated Statutes). Section 163-11, G. S. provides for the appointment, term of office, and qualifications of members of the county board of elections, and among other things, says:

"No person shall serve as a member of the county board of elections who holds any elective public office or who is a candidate for any office, in the primary or election."

A Selective Service Board official or Appeal Agent, in my opinion, does not come within the restrictive provision of this section. However, Section 163-15, G. S., which provides for the appointment of registrars

and judges of elections and their qualifications, among other things, specifically provides:

"No person holding any office or *place of trust* or profit under the government of the United States, or of the State of North Carolina, or any political subdivision thereof, except justices of the peace, shall be eligible to appointment as an election official."

The term "election official" as herein used means "registrar" and "judges of elections." I am of the opinion that a member of any of the various selective service boards and appeal agent is a "place of trust" and such a member may not serve as a registrar or judge of elections.

I am, therefore, of the opinion that a member of a selective service board or United States Selective Service District Board of Appeals or Appeal Agent may serve as a member of such board or as appeal agent and at the same time hold any election official office other than that of registrar and judge of elections.

You further inquire as to the effect of acceptance of an office by one who already occupies an office. Our court held, in the case of *Whitehead v. Pittman*, 165 N. C. 89, that where one holding an office or place of profit accepts another such office or position in contravention of this section of the Constitution, the first is vacated *eo instanti*, and any further acts done by him in connection with the first office are without cover, and cannot be *de facto*. See also the case of *Barnhill v. Thompson*, 122 N. C. 493.

OPINIONS TO COMMISSIONER OF LABOR

WORLD WAR VETERANS; EDUCATIONAL ADVANTAGES FOR CHILDREN OF
VETERANS; REQUIREMENTS; CAUSE OF DEATH OF VETERAN;
RENEGAR, RANSOM B., XC-643 739—AUDRY M.
RENEGAR (Minor)

20 November, 1942.

Receipt is acknowledged of your letter of November 18 relative to the right of the above named minor to receive the educational advantages for children of World War Veterans, as provided under the North Carolina Law.

One of the requirements of our law in relation to a case of the type mentioned in your letter is that the father of the child in question must have died as a direct result of injuries, wounds, or other illnesses contracted during the period of service. The period mentioned is between April 6, 1917, the date of the declaration of war, and July 2, 1921, the legal termination thereof.

The certificate furnished you by the Veterans Administration does not show that the applicant comes within the class designated as war orphans. Unless there are other facts which do not appear in your letter or the certificate of the Veterans Administration, I am of the opinion that the child about whom you inquire would not be entitled to the benefits of the Act providing for educational advantages for children of World War veterans.

EDUCATION; FREE TUITION, ROOM RENT, ETC.; WORLD WAR ORPHANS;
NO REQUIREMENT AS TO PAYMENT OF CASH

10 April, 1943.

You inquire as to whether, in my opinion, under the existing law, there is any provision for the payment of cash refunds for expenses paid by young people attending the colleges in this State under the law governing the educational benefits to children of World War veterans.

From an inspection of the statutes relating to educational advantages for World War orphans, it is my opinion that the educational institutions of the State would not be required to make any cash payments of items which were not furnished by the institutions but would only be required to furnish free of charge such charges and fees as are necessary for the student to remain in school and pursue the course of study selected.

You inquire specifically as to whether a State educational institution would be required to reimburse the mother of a student for his room rent while pursuing his course of study if the student occupied a room in the home of his mother.

The statute provides that in addition to the scholarship of free tuition, there shall also be granted to any child needing financial

assistance, who is within the classification covered by the statute, free room rent and board in any of the State's educational institutions which provide rooms and eating halls operated by the institution. If the student does not take advantage of the facilities furnished by the institution, it is my opinion that the institution would be under no obligation to the student or any other person for the payment of room rent or board furnished elsewhere.

CHILD LABOR; EMPLOYMENT OF MINORS IN STREET TRADES;
WHAT CONSTITUTES EMPLOYMENT

20 May, 1943.

Section 9 of Chapter 317 of the Public Laws of 1937 provides as follows:

"Before any minor under eighteen years of age shall be employed, permitted or allowed to work, in, about or in connection with any gainful occupation, the person employing such minor shall procure and keep on file an employment certificate for such minor, issued as hereinafter prescribed. In case of a minor engaged in street trade where the relationship of employer and employee does not exist between such minor and the supplier of the merchandise which the minor sells, the parent or guardian of such minor shall be deemed the employer of such minor and shall procure and keep on file the employment certificate herein required."

In your letter of May 15, 1943, you state that the Peerless Ice Cream Company of Winston-Salem, North Carolina, owns a number of dry ice boxes and small wagons and manufactures ice cream for wholesale and retail purposes. You state that boys of ages ranging from 10 years up purchase small ice cream packages and are charged on the books of the company for ice cream. The company provides them with boxes or wagons and they peddle the product over the community after which they return to the plant and settle with the company for the ice cream. The boys pay the company 40c a dozen for the ice cream packages and sell them at a profit of 20c on the dozen. Unsold ice cream is redeemed by the company at the price charged the minor. The boys selling the ice cream are required to pay the company 5c per pound for dry ice used to keep the ice cream from melting.

You have requested my opinion as to whose responsibility it is to procure and keep on file an employment certificate for minors engaged in this business. The statute provides that if the relationship of employer and employee exists between the supplier of merchandise and a minor selling it on the streets, the certificate must be obtained by the person or firm supplying the merchandise. However, if no such relationship exists, the statute provides that the certificate shall be obtained by the parent or guardian of such minor, who shall be deemed his employer.

The answer to the question which you raise, therefore, depends upon whether the Peerless Ice Cream Company may be considered the employer of the boys vending its products on the streets.

In my opinion, this question is decided by the decision of the Supreme Court of North Carolina in *Cresswell v. Charlotte News*

Publishing Company, 204 N. C. 380. In that case, a 14 year old boy, who had been injured while selling newspapers on a street, sought to recover compensation under the Workmen's Compensation Act from the newspaper publishing company. The facts were that the boy had been engaged by an agent of the company to sell papers on the street. Each day, a certain number of papers were turned over to him on credit. The boy settled for all papers sold at the rate of 3c each and retained the selling price above 3c. Unsold papers were returned to the company at the end of the day. The boy was assigned a regular territory in which to vend papers and a supervisor of the company checked up at intervals to determine whether he was staying on the beat assigned to him. The Supreme Court held that the boy in question was not an employee of the newspaper publishing company. Justice Brogden stated, at page 382,

"While there was certain supervision exercised by the agent of the defendant with respect to the territory assigned, the control over the methods of selling was too uncertain, indefinite, and remote to constitute the relationship of employer and employee."

I am unable to see any substantial difference between the method by which the newspaper company furnished papers to the plaintiff in the Creswell case and the method by which ice cream is furnished to boys for sales on the street by the Peerless Ice Cream Company. If anything, the fact that the newspaper company exercised control over the methods of selling newspapers to the extent that a specific territory was assigned to the newspaper boy made out a stronger case for considering him an employee of the company.

I do not find any differences in the language of the Workmen's Compensation Act and the language of Section 9 of Chapter 317 of the Public Laws of 1937 which would require different constructions of the term "employment" under these statutes. Under the 1937 Act, it is provided that the supplier of merchandise shall obtain the certificate if the relationship of employer and employee exists between the supplier and the minor vending merchandise. However, the term "employer" is not defined and is left to judicial construction.

Paragraph (b) of Section 2 of Chapter 120 of Public Laws of 1929, the Workmen's Compensation Act, does not contain any peculiar or unusual definition of the term "employee" which would make the decision in the Cresswell case inapplicable. It provides that a person is an employee if engaged in employment under any appointment or contract of hire or apprenticeship expressed or implied, oral or written, including minors, whether lawfully or unlawfully employed. This merely means that a minor is an employee, for purposes of the Act, whether his employment arises under an expressed or implied contract and whether the employment violates any statute relating to child labor or the like. Under this statutory provision, what constitutes employment or an employer-employee relationship is also left to judicial construction.

In view of the decision in Cresswell v. Charlotte News Publishing Company, I do not think that the question of whether the boys selling the products of the Peerless Ice Cream Company are its employees

is an open one. I am of the opinion that under this decision, they must be regarded as independent contractors rather than employees. The statute contemplates that the relationship of employer and employee may not exist between the supplier of merchandise and a minor vending it on the streets by providing that in such cases the duty to obtain the certificate shall be that of the parent or guardian. I, therefore, advise that the law does not require that the Peerless Ice Cream Company obtain certificates in the situation which you have outlined. The duty is clearly that of the parents or guardians of the boys and not the duty of the company.

BOILER INSPECTION; APPOINTMENT OF SPECIAL INSPECTOR;
SECTION 7312(9)

21 September, 1943.

I acknowledge receipt of your letter in which you enclose a copy of a letter from Honorable John W. Cathey, Attorney for Southern Insurance Engineers, inquiring whether or not said company or its employees might be licensed as special boiler inspectors under the State Boiler Inspection Law.

Section 7312(9) provides for the appointment of special boiler inspectors, and the pertinent portions of said section are as follows:

"In addition to the deputy boiler inspectors authorized by section 7312(8), the commissioner of labor shall, upon the request of any company authorized to insure against loss from explosion of boilers in this State, issue to any boiler inspectors of said company commissions as special inspectors: Provided, that each such inspector before receiving his commission shall pass satisfactorily the examination provided for in section 7312(10), or, in lieu of such examination, shall hold a certificate of competency as an inspector of steam boilers for a state that has a standard of examination equal to that of the State of North Carolina, or a certificate from the national board of boiler and pressure vessel inspectors. . . ."

I understand from Mr. Cathey's letter that the Southern Insurance Engineers is an enterprise owned and managed by Mr. E. P. Baylor, and proposes to act as agent for various insurance companies for the purpose of performing and rendering engineering service for such companies in the nature of mapping, planning and engineering of various types of insurance, compensation, liability for elevator, boiler explosions, etc., and that its clients desire to have it qualify as a boiler inspector under the provisions of the quoted section. Mr. Cathey suggests two set-ups under which this company might render the service provided for by special inspectors under Section 7312(9). His first suggestion is that the Southern Insurance Engineers might be named the agent for insurance companies which it represents and in turn be named a special inspector under said section. I do not think that this section is subject to the interpretation of naming a company as a special inspector. It seems to me that the appointment is a personal one and that the person named must, himself, have the personal qualifications set out in said section. The section does not refer to a corporation or firm, but to individuals.

I do think, however, that a set-up somewhat similar to the second proposition suggested by Mr. Cathey might comply with the provisions of the pertinent section. I am of the opinion that a person who meets the qualifications set out in said section as a special inspector might be named by the various insurance companies represented by Mr. Cathey's client as its boiler inspector, and as the inspector of one or more of such insurance companies, be named the special boiler inspector under the provisions of said Section 7312(9).

Of course, your Department would not necessarily be interested in any working arrangement between the underwriting companies and the Southern Insurance Engineers as to liability for the acts of such inspector or from whom he receives his compensation, so long as he is the designated boiler inspector of one or more of such underwriting companies and meets the qualifications set out in said section.

OPINIONS TO STATE HIGHWAY AND PUBLIC WORKS COMMISSION

MUNICIPAL ORDINANCES; REGULATION OF OPENING AND CLOSING HOURS OF BUSINESS HOUSES AND INDUSTRIES

30 July, 1942.

You request my opinion as to the authority of a municipality to adopt a valid ordinance regulating the opening and closing hours of business houses and industries.

An examination of our statutes discloses no law which expressly authorizes such a regulation of this type of business. Section 2787 of Michie's North Carolina Code of 1939 Annotated, which enumerates the general powers of municipal corporations and authorizes regulation of certain specifically mentioned types of businesses, would not, to my mind, authorize an ordinance of this kind. Subsection 7 of Section 2787 authorizes municipalities to pass such ordinances as are expedient for maintaining and promoting the peace, good government, and welfare of the city, and the morals and happiness of its citizens, and for the performance of all municipal functions.

The courts of this State have consistently upheld municipal ordinances regulating and prohibiting the pursuit of all occupations on Sunday on the grounds that such regulations are within the powers conferred on town authorities in the exercise of the police power; but when you come to consider the question of the validity of ordinances requiring business houses and industries to observe certain hours, a different question is raised.

The Supreme Court of North Carolina, in the case of *State v. Ray*, 131 N. C. 814, held that an ordinance of a town requiring stores to be closed at 7:30 in the evening was invalid on the ground that permitting a city or town to pass such an ordinance would be giving it equal power with the Legislature to restrict personal and property rights. In view of the ruling in this case, I could not advise that municipalities could pass valid ordinances requiring business houses and industries to observe certain hours.

This opinion is confined to an interpretation of the State Laws and the decisions of the North Carolina Supreme Court thereon.

OPINIONS TO STATE BOARD OF HEALTH

HEALTH LAWS; SANITATION INSPECTION; DRINK STANDS; SALE OF ICE CREAM

28 July, 1942.

In your letter of July 22 you enclose a copy of the rules and regulations governing the sanitation of drink stands, as adopted by the State Board of Health, under authority of Chapter 309, Public Laws of 1941. You desire to know whether these regulations are applicable in ice cream parlors where ice cream dishes are used for serving the product.

From an inspection of the rules and regulations which you enclose in your letter, it appears that the State Board of Health, under the provisions of Chapter 309, Public Laws of 1941, is undertaking to regulate drink stands, soda fountains, etc., in which no food is prepared on the premises. In a letter to Honorable Warren H. Booker, Director of the Division of Sanitary Engineering of the State Board of Health, this office, in construing Chapter 309 of the Public Laws of 1941, said:

"In your letter of July 30 you ask for my opinion as to the meaning of the expression 'lunch and drink stands,' which is used in Section 1 of Chapter 309, Public Laws of 1941. You ask specifically whether or not the places you enumerate would have to have lunch facilities, or eating facilities, along with the sale of drinks, in order to come within this law, which contemplates the inspection and grading of the designated establishments for sanitary purposes.

"My examination of the act leads me to the conclusion that both of these activities would have to be present in order for the establishment to come within the purview of the law. Each time the expression is used in the act, it is used as words in a series of definitions of the type of establishment to be covered by the law. In each of the series this expression is set off by commas, and the words 'lunch and drink stand' are enclosed by commas as one type of establishment to be covered along with the others enumerated in the series.

"I believe that the above mentioned usage of this expression is too clear to permit any other construction of the terms used. As a practical matter, however, it would not seem likely that many soft drink or beer establishments would sell drinks without having some lunch or eating facilities."

It is true that Sections 7251(a) to 7251(j) of Michie's North Carolina Code of 1939 Annotated places the duty on the Department of Agriculture to perform certain duties in connection with places where ice cream and certain other products are made for sale. Section 7251(h) authorizes the Board of Agriculture to make such definitions and to establish such standards of purity for products and sanitation for plants or places of manufacture with such regulations as are necessary to insure the proper enforcement of the provisions of the Sections above referred to. Section 7251(i) provides for an inspection

fee of \$20.00 to be paid by the owner, proprietor, or operator of each ice cream factory where ice cream and certain other products are made or stored and sold at wholesale, and an inspection fee of \$5.00 to be paid by each maker of ice cream and certain other products, who disposes of his product at retail only.

I contacted Dr. Kilgore who is connected with the Department of Agriculture and he informs me that the Department of Agriculture confines its activities primarily to the inspection of plants manufacturing ice cream and other products to be sold either at wholesale or retail, and that it is his thought that the sanitary regulations as applicable to establishments selling ice cream and other products mentioned in the Section above referred to in connection with other businesses, such as eating establishments, should be enforced by the health authorities rather than by the Department of Agriculture.

MERIT SYSTEM COUNCIL ACT OF 1941; COVERAGE; APPLICATION OF
COUNTIES PARTICIPATING IN FEDERAL AND STATE FUNDS

20 August, 1942.

The first question raised in your letter of August eighteenth is whether the State Board of Health would be justified in continuing financial participation in the program of the Mecklenburg County Health Program if a portion of the Federal funds allotted to Mecklenburg County is re-allotted by said County to the City of Charlotte, if the City of Charlotte refuses any State and Federal aid and elects to operate outside the Merit System Council Act.

It is true that this office, on the 29th day of June 1942, advised Honorable C. W. Tillett, City Attorney of the City of Charlotte, that if the City of Charlotte does not participate directly or indirectly in funds appropriated by the Federal Government or disbursed by the State for its public health or welfare activities, then and in such event, the Merit System Council Act has no application to employees of the City. It will be noted that in order to be exempted from the provisions of the Merit System Council Act, it would be necessary for the City of Charlotte to receive no funds appropriated by the Federal Government or disbursed by the State for its public health or welfare activities. It, therefore, appears to me, that if the County of Mecklenburg receives these funds and re-allots them to the City of Charlotte, the exemption would not exist as to the City of Charlotte, and the State Board of Health would be justified in refusing to allot funds to the County of Mecklenburg unless the City of Charlotte complied with the provisions of the Merit System Council Act.

Your second question relates to whether, if Mecklenburg County should elect to follow the example of the City of Charlotte in withdrawing from State and Federal participation with reference to health work because of the Merit System Council Act, it would affect participation by the use of State and Federal funds in the public welfare program in Mecklenburg County.

As above set out, this office has held that in order for a county or city to be exempted from the provisions of the Merit System Council

Act, it is necessary that there be no participation directly or indirectly in funds appropriated by the Federal Government or disbursed by the State for its public health or welfare activities. Therefore, Mecklenburg County might be placed in the position of jeopardizing its participation in State and Federal funds allotted to its public welfare program if it refuses to comply with the Merit System Council Act in connection with its public health program.

INVESTIGATION OF EFFECTS OF GAS FUMES ON RAILROAD
EMPLOYEES ON TRAINS

16 September, 1942.

I have your letter of September 15 enclosing a letter from Mr. Albert D. Humphrey, referring to the alleged injurious effect of fumes from Diesel motors on railway mail clerks.

It seems to me that it would be within your power to cause an investigation to be made as to the effect on the health of railway employees from Diesel motors, if, in your opinion, such investigation was desirable and proper. While railway mail clerks are not employees within the terms of our Workmen's Compensation Law, yet, while at work on trains operating in North Carolina, matters which may concern their health would, in my opinion, be subject to investigation by your Board just as any other situation affecting health might be looked into.

VITAL STATISTICS; CHANGE OF NAME ON BIRTH CERTIFICATE; CHILD
BORN IN WEDLOCK PRESUMED TO BE LEGITIMATE

21 November, 1942.

It appears from your letter and the data enclosed therewith that Dorothy Snow married one Willie Wadsworth on the 6th day of February 1936, and at the time of such marriage Dorothy Snow was pregnant with child. The child, June Elaine Wadsworth, was born on the 13th day of May, 1936. Willie Wadsworth and Dorothy Snow Wadsworth separated in September 1936, and the wife obtained a divorce on July 14, 1941, and on October 9, 1941, she married one Berkley Garner Payne, who it seems is in reality the father of June Elaine Wadsworth. Payne and his wife now have custody of the child and desire to have a birth certificate for the child giving its correct and true name as June Elaine Payne, instead of Wadsworth. You desire to know how this can be accomplished.

A child born in wedlock, though born within a month or a day after marriage is legitimate by presumption of law and where a child is born during wedlock, of which the mother was visibly pregnant at the marriage, it is a presumption juris et de jure that it was the offspring of the husband. The reason for the rule is that a man who marries a woman whom he knows to be in this situation is to be considered as acknowledging by a most solemn act that the child is his. *State v. Herman*, 35 N. C. 502.

In the case of *West v. Redmond*, 171 N. C. 742, it is held that the law presumes legitimacy of a child born in lawful wedlock, though

within a short period of time after marriage, but that the presumption may be rebutted by facts and circumstances which show that the husband could not have been the father of the child, such as impotency, or that he could not have had access to his wife.

Thus, there is a presumption that Willie Wadsworth is the father of June Elaine Wadsworth and it seems to me that the easiest way in which the matter could be clarified would be for Berkley Payne and his wife, Dorothy Payne, to institute an adoption proceeding and when this is completed, the birth certificate of the child could be properly changed, under the provisions of Section 191(7) of Michie's North Carolina Code of 1939 Annotated.

VITAL STATISTICS; CERTIFIED COPIES OF BIRTH AND DEATH
CERTIFICATES; FEES; PERSONS IN MILITARY SERVICE

1 December, 1942.

In your letter of November 20, 1942, you state that requests are being received by the Bureau of Vital Statistics for certified copies of death certificates for members of our armed forces who have died in service and that numerous requests are received for birth certificates for children of persons in our armed forces for use in establishing dependency under the Servicemen's Dependents Allowance Act. You inquire whether the Bureau of Vital Statistics is required to issue such certificates free of charge.

Consolidated Statutes, Section 7111, provides that the State Registrar of Vital Statistics shall be entitled to a fee of fifty cents to be paid by the applicant for furnishing a certificate of the record of any birth or death. By the same Section, the State Registrar is required to account for these fees to the Treasurer of the State Board of Health.

Exception to the requirement of a fee of fifty cents is made in Section 7111 with respect to transcripts or certified copies furnished to the United States Census Bureau. Section 7111(a) authorizes certificates to be furnished without payment of fees to certain officers of the American Legion for the benefit of ex-soldiers of the World War and members of their families and for use in connection with American Legion junior baseball.

There is no statutory exemption from the general requirement that fees be paid for certificates when birth certificates are sought for children of persons now in the armed service or when death certificates are sought for persons now in the armed service of the United States. Therefore, you would not be required to issue such certificates free of charge.

HOSPITALS; COUNTY TUBERCULAR HOSPITAL; MANAGEMENT; COUNTY
BOARD OF HEALTH; POWERS TO ESTABLISH RULES AND REGULATIONS

11 December, 1942.

In your letter of December 8, 1942, you enclose letter from Dr. T. O. Coppedge, County Health Officer of Nash County, in which he raises the questions as to whether it is mandatory for the county to

appoint a hospital board of managers for the tubercular hospital in Nash County and as to the power of the County Board of Health to establish rules and regulations which will tend to prevent the spread of disease, particularly as it relates to the operation of the tubercular hospital.

The first question raised in Dr. Coppedge's letter has been dealt with in a letter written by this Office to Honorable J. C. Ellis, Auditor of Nash County, on December 2, 1942. I am enclosing herewith copy of this letter for your consideration.

Section 7065 of Michie's North Carolina Code of 1939 Annotated provides:

"The county board of health shall have the immediate care and responsibility of the health interests of their county. They shall meet annually in the county town, and three members of the board are authorized to call a meeting of the board whenever in their opinion the public health interest of the county requires it. They shall make such rules and regulations, pay such fees and salary, and impose such penalties as in their judgment may be necessary to protect and advance the public health. All expenditures shall be approved by the board of county commissioners before being paid."

You will note that this Section makes it the duty of the County Board of Health to make such rules and regulations as in their judgment may be necessary to protect and advance the public health. To my mind, this means general rules based upon a reasonable foundation as opposed to arbitrary rules and regulations adopted without reasonable and proper foundation to apply to particular cases.

In the case of Board of Health v. Lewis, 196 N. C. 641, 649, the Supreme Court, in considering a question relating to the powers of the County Board of Health to adopt ordinances, said:

"There is manifestly, we think, a distinction between a statute enacted by the General Assembly, and a rule, regulation or ordinance made or adopted by a county board of health, under statutory authority. The General Assembly has the power and authority to enact statutes, subject only to constitutional limitations; whereas a board of health has only such power to make rules and regulations and to adopt ordinances as has been conferred upon it by statute. A county board of health, in this State, has the immediate care of and responsibility for the health interests of the county. It has the power to make such rules and regulations as are in its judgment necessary to protect and advance the public health. C. S., 7065. When the validity of a rule or regulation made by a board of health is challenged upon the ground that the facts found by the board as justification for the same are not true, the finding is not necessarily conclusive. One whose rights of person or of property are injuriously affected by the rule or regulation will be heard by the courts upon his allegation that the facts are otherwise than as found by the board. As said in *S. v. Higgs*, 126 N. C. 1014, 35 S. E. 473, if a thing is not in fact a nuisance, calling it a nuisance does not make it so. To hold otherwise might result in the deprivation of rights of person or property without due process of law. 12 R. C. L., 1281."

I do not believe that the County Board of Health would have a right to take action which would have the effect of placing the control and operation of the county hospital in the County Board of Health instead of the regular governing authorities fixed by statute. Of course, under the provisions of Section 7071, a county health officer is given authority to require the abatement of nuisances.

It is my thought that the County Board of Health of Nash County and the County Commissioners should coöperate in matters pertaining to the public health in order that the spread of disease may be held to a minimum. I am sure that the Board of County Commissioners of Nash County is as anxious as the Board of Health to operate the county tubercular hospital in such a manner as to prevent the spread of tuberculosis.

BIRTH CERTIFICATES; MAKING CHANGES THEREON

23 February, 1943.

In your letter of February 16, 1943, you inquire as to the right of the Bureau to make changes in birth certificates recorded in your office.

Section 7105 of the North Carolina code Anno. (Michie, 1939), provides that no certificate of birth or death, after its acceptance for registration by the local registrar, shall be altered or changed in any respect otherwise than by amendments properly dated, signed and witnessed.

Under this provision, I am of the opinion that you would have authority to correct errors and make other proper changes when an amendment in satisfactory form is submitted to you. This provision does not, in my opinion, authorize indiscriminate altering or changing of certificates, but was intended only to allow the correction of errors so as to make the certificate speak the truth.

If you are satisfied by the enclosed depositions concerning W. L. Higgins, or Smith, you would be authorized, in my opinion, to make such a change.

SANITARY DISTRICTS; DISSOLUTION

23 February, 1943.

In your letter of February 16, 1943, you inquire as to the method of abolishing the Archdale-Trinity Sanitary District.

I have examined the sections regulating sanitary districts and have found that they contain no provision authorizing or permitting the abolition of sanitary districts. Since no provision of the law authorizes the abolition of sanitary districts, I am of the opinion that an act of the Legislature will be necessary to abolish the district which you have in mind. Your attention is directed to Article II, Section 29, of the Constitution of North Carolina, which provides that the General Assembly shall not pass any local, private or special act or resolution relating to health, sanitation and the abatement of nuisances. Our Court has held, in the case of Sanitary District v.

Prudden, 195 N. C. 722, that an attempt by the Legislature to set up a sanitary district by a special or local act is void.

It is my opinion that an attempt to repeal a particular sanitary district would be as much a special or local act relating to health, sanitation and the abatement of nuisances as an act creating a particular sanitary district. It would, in my opinion, be void. This is true, of course, only if the district has been established under the general law, because Article II, Section 29, authorizes the repeal by the General Assembly of any local, special or private legislation enacted by it.

Thus, it will be seen that if the sanitary district about which you inquire was established by a special Act, it may constitutionally be abolished by a special act. If, however, it was established under the general law, it could not, in my opinion, be abolished by a special act, because of Article II, Section 29, of the State Constitution. I see no objection, however, to the enactment of a general law regulating the abolition or dissolution of sanitary districts in general.

Of course, if the sanitary district about which you inquire is a Special-Tax Sanitary District, as defined in Chapter 118, Article 5, of the Consolidated Statutes, it may be dissolved or abolished by the procedure outlined in Section 7080.

PUBLIC HEALTH; STATE LABORATORY OF HYGIENE NOT PERMITTED TO
CHARGE IN EXCESS OF \$64.00 A YEAR FOR PUBLIC WATER
SUPPLY COMPANIES FOR TESTS AND EXAMINATIONS

24 February, 1943.

I acknowledge receipt of your letter of the 19th inst., in which you state that because of the requirements of the U. S. Public Health Service, some thirty sources of public water supplies in North Carolina are requiring a considerably larger number of examinations and water tests than was anticipated when Section 7059 of the Consolidated Statutes was enacted, fixing an annual tax of \$64.00 to be paid by municipal water companies for services rendered to those furnishing public water supplies.

You inquire whether or not you are entitled to charge a fee of \$5.00 for each additional sample which you are called upon to examine for public supplies and required because of the ruling of the U. S. Public Health Service.

Section 7059 provides, in part: "For the support of the State Laboratory of Hygiene in addition to the annual appropriation there is hereby appropriated an annual tax of sixty-four dollars, payable quarterly, by every water company, municipal, corporate and private, selling water to the public. . . ."

As can be seen from this section, there are two sources of support for the State Laboratory of Hygiene, one, the annual appropriation, and the other an annual tax of \$64.00 payable by those furnishing water to the public. It is my opinion that this section limits the amount you may charge a municipal, corporate or private water company selling water to the public to the fixed annual levy of \$64.00 for each of the sources supplying water.

HEALTH; VENEREAL DISEASES; TREATMENT OF MINORS; NECESSITY FOR
CONSENT OF PARENT OR GUARDIAN

25 February, 1943.

I have your letter of February 10, 1943, in which you request an opinion as to whether physicians of venereal disease clinics of the State Board of Health may require minors who are infected with venereal diseases to submit to treatment without the consent of their parents or guardians.

Consolidated Statutes, Section 7193, provides in part:

"State, county, and municipal health officers, or their authorized deputies, within their respective jurisdictions are hereby directed and empowered, when in their judgment it is necessary to protect the public health, to make examinations of persons reasonably suspected of being infected with venereal disease, and to detain such persons until the results of such examinations are known; to require persons infected with venereal disease to report for treatment until cured or to submit to treatment provided at public expense until cured; and, also, when in their judgment it is necessary to protect the public health, to isolate or quarantine persons infected with venereal disease."

Consolidated Statutes, Section 7195, provides:

"The North Carolina state board of health is hereby empowered and directed to make such rules and regulations as shall in its judgment be necessary for the carrying out of the provisions of this article, including rules and regulations providing for the control and treatment of persons isolated or quarantined under the provisions of section 7193, and such other rules and regulations, not in conflict with provisions of this article, concerning the control of venereal diseases, and concerning the care, treatment, and quarantine of persons infected therewith, as it may from time to time deem advisable. All such rules and regulations so made shall be of force and binding upon all county and municipal health officers and other persons affected by this article, and shall have the force and effect of law."

The purpose of these Sections is to provide a procedure for requiring all persons who are infected with venereal disease to submit to treatment, with or without their consent. No exception is made in case of a minor and there is no requirement for the consent of his parent or guardian to be given. The danger that the infection will be spread is, of course, as great where the person infected is a minor as where he is an adult. It seems to me that these statutes afford ample authority for duly authorized officers of the State Board of Health or local boards of health to require infected persons of all ages to submit to compulsory treatment.

I, therefore, advise that the consent of the parent or guardian of a minor is unnecessary and that a physician who administers treatment to such a person without the consent of the parent or guardian would not be subjected to any civil liability on account of such treatment when he acts pursuant to the instructions of an officer or agent of the State Board of Health.

PUBLIC HEALTH; RIGHT OF COUNTY BOARD OF EDUCATION TO REQUIRE
AN X-RAY EXAMINATION OF ALL SCHOOL TEACHERS TO DETERMINE
THE PRESENCE OR ABSENCE OF TUBERCULOSIS INFECTION

4 March, 1943.

You inquire as to the right of a County Board of Education to require that each teacher teaching in the public schools in the county be required to have an X-ray examination in order to determine the presence or absence of tuberculosis infection.

Section 5556 of Michie's North Carolina Code of 1939 Annotated provides that county superintendents, city superintendents, teachers, janitors, and other employees in the public schools of the State shall file in the office of the superintendent each year before assuming their duties a certificate from the county physician or other reputable physician of the county certifying that the said person has not an open or active infectious state of tuberculosis or any other contagious disease. The Section further provides that the county physician shall make the certificate without charge to the person applying for the certification. It seems to me that the only way to definitely determine whether a person has an open or active infectious state of tuberculosis would be by means of an X-ray of fluoroscopic examination, even though the statute itself does not definitely say that such procedure is necessary in order for the county physician or other physician to make the certificate provided for in Section 5556.

It is my opinion that a requirement by the County Board of Education that an X-ray or fluoroscopic examination of the chest of each teacher or school employee be made as a basis for the certificate required under Section 5556, would be upheld as a valid requirement, provided the X-ray or fluoroscopic examination would be furnished free of charge or at a nominal cost. I cannot see how any teacher or employee would have any valid objection to such an examination under these conditions.

I am enclosing herewith copy of a letter dated July 24, 1941, to Dr. Carl V. Reynolds, State Health Officer, on the right of County Boards of Health to enact ordinances requiring X-ray examination of school teachers. You will note that in the question as raised by Dr. Reynolds the X-ray pictures were to be interpreted only by a member of a certain society to the exclusion of all other persons who might be qualified to interpret the X-ray plates. I was of the opinion that this might be an unreasonable and unjustified requirement.

PUBLIC HEALTH; AUTHORITY OF PRIVATELY OPERATED SEWER SYSTEM
TO DISCONTINUE SERVICE TO INDIVIDUALS FOR NONPAYMENT OF FEES

12 March, 1943.

I acknowledge receipt of your letter of the 11th inst., enclosing a letter from Messrs. Carr, James & Carr, Attorneys, Wilmington, North Carolina, in which they inquire whether or not a sewer system operated by a private corporation is authorized by law to discontinue service to an individual for nonpayment of fees for service rendered by said corporation.

I do not know of any statute covering this question or which empowers your Department to pass rules and regulations relating to the discontinuance of services to an individual by a private corporation operating a sewer system for nonpayment of fees.

It occurs to me that this is a matter which would be covered by private contract between the owner of the sewer system and those whom it serves. I do not think this question is covered by Section 2806(m), as that section gives authority to municipal corporations only to terminate sewer services for nonpayment of fees.

PUBLIC HEALTH; AUTHORITY OF THE BOARD OF HEALTH TO INSPECT AND
ENFORCE SANITARY RULES APPLICABLE TO BAKERIES
PREPARING SANDWICHES

12 March, 1943.

I acknowledge receipt of your letter of the 9th inst., in which you state that your Department has received complaints from restaurant operators, claiming that certain bakeries preparing and handling sandwiches are not complying with sanitary conditions.

You inquire whether or not Chapter 173 of the Public Laws of 1921, entitled "An Act to require sanitary conditions in public bakeries, and inspection of same," is repealed by Chapter 309 of the Public Laws of 1941, entitled an Act to promote the sanitation of hotels, cafes, restaurants, etc.

I am of the opinion that Chapter 309 of the Public Laws of 1941 does not repeal Chapter 173 of the Public Laws of 1921. Section 1 of Chapter 173 of the Public Laws of 1921 in part says:

"That every room or other place occupied or used as a bakery for the preparation, production, storage, or display of *bread*s, *cake*s, or other bakery products intended for sale for home consumption, shall be clean, properly lighted, and ventilated." It, therefore, occurs to me that Chapter 173 of the Public Laws of 1921 was enacted for the purpose of regulating the sanitary conditions of bakeries engaged in the preparation and sale of purely bakery products, such as bread, cakes, etc. The duty of enforcement of this Act is placed on the Department of Agriculture.

You further inquire whether or not, under the provisions of Chapter 309 of the Public Laws of 1941, your Department is required to inspect and establish rules and regulations governing the sanitation of bakeries engaged in the preparation, manufacture and sale of sandwiches to the public through restaurants, cafes, etc.

Chapter 309 of the Public Laws of 1941, Section 1, says in part:

"For the better protection of the public health, the State Board of Health is hereby authorized, empowered, and directed to prepare and enforce rules and regulations governing the sanitation of hotels, cafes, restaurants, tourist homes, tourist camps, summer camps, lunch and drink stands, *sandwich manufacturing establishments* and all other establishments where food is prepared, handled and served to the public at wholesale or retail for pay. . . ."

I am of the opinion that this section covers any establishment which prepares or manufactures sandwiches for sale at either whole-

sale or retail, and that this section is broad enough to include bakeries which are engaged in the preparation and manufacture of sandwiches to be sold at retail or wholesale to the public, either directly or through restaurants, cafes, etc., and that Chapter 309 of the Public Laws of 1941 places the responsibility upon the State Board of Health to promulgate and enforce rules and regulations governing the sanitation of bakeries engaged in the manufacture and sale of sandwiches to the public.

VITAL STATISTICS; CERTIFICATES REQUESTED THROUGH VETERANS
ADMINISTRATION; FREE CERTIFICATES

16 June, 1943.

You have requested an opinion from this office as to whether the Bureau of Vital Statistics is required to furnish free copies of birth and death certificates of veterans of the present war and their dependents when requested to do so through the Veterans Administration. You state that certificates are frequently requested in connection with claims being presented to the Veterans Administration and that it has been contended that such certificates should be furnished free of charge.

Section 15 of Chapter 33 of the Public Laws of 1929, codified as North Carolina Code Annotated (Michie, 1939), Section 2202(15), provides as follows:

"Whenever a copy of any public record is required by the Bureau or State Service Officer to be used in determining the eligibility of any person to participate in benefits made available by such Bureau, the official charged with the custody of such public record shall without charge provide the applicant for such benefits or any person acting on his behalf or the representative of such Bureau or State Service Officer with a certified copy of such record."

Under this section, it was provided that whenever a copy of any public record should be required by the Veterans Bureau or the State Service Officer in determining the eligibility of persons for relief afforded by the Veterans Bureau certified copies of the records should be furnished without charge. In my opinion, birth certificates and death certificates are public records within the meaning of this section.

You will note also that the section does not confine itself to claims presented on behalf of veterans of any particular war or their dependents but that it applies whenever a claim is presented to the Veterans Bureau where copies of records are needed to determine the eligibility of the claimant.

The Veterans Bureau has now been consolidated with the Veterans Administration under the authority of an Act of Congress enacted in 1930 and pursuant to an Executive Order of the President of the United States. The duties of the director of the Veterans Bureau have devolved upon the head of the Veterans Administration, who is known as the administrator of veterans' affairs. See 38 U. S. C. A., Sections 11 and 11a.

In my opinion, Section 15 of Chapter 33 of the Public Laws of 1929 applies to claims presented to the Veterans Administration, which is the successor to the Veterans Bureau, in the same manner that it originally applied to claims being presented to the Veterans Bureau.

Therefore, since the statute applies regardless of the war of which the claimant is a veteran and since it is applicable to claims presented to the Veterans Administration, I advise that certified copies of birth and death certificates should be furnished free of charge when requested in connection with claims being presented to the Veterans Administration on behalf of veterans of the present war or their dependents.

PUBLIC HEALTH; OPERATION OF VENEREAL DISEASE TREATMENT CENTER;
APPLICATION OF WORKMEN'S COMPENSATION ACT TO
EMPLOYEES; FUNDS OUT OF WHICH COMPENSATION
MAY BE PAID

2 September, 1943.

Receipt is acknowledged of your letter enclosing letter from Honorable Kenneth Markwell, Reginal Director of the Federal Works Agency, in regard to compensation insurance on the employees of the Rapid Treatment Center in Charlotte, North Carolina, which is now being operated by the State Board of Health with funds furnished by the Federal Works Agency without any participation by the State of North Carolina.

Since talking to you in regard to this matter, I have made a further investigation of the decisions of the Supreme Court of North Carolina relative to whether the employees who are employed in connection with the Rapid Treatment Center in Charlotte would be considered as employees of the State of North Carolina.

In the case of *Mayze v. Forest City*, 207 N. C. 168, the plaintiff was employed by the Superintendent of Water and Lights of the Town of Forest City at wages agreed upon by plaintiff and the Superintendent. The plaintiff's wages were paid out of funds procured by the Town of Forest City from the Reconstruction Finance Corporation. The Industrial Commission found that the plaintiff was an employee of the Town and awarded compensation. On appeal to the Superior Court, the award was reversed, but on appeal to the Supreme Court of North Carolina, the judgment of the Superior Court was reversed, and the Court said:

"The fact that plaintiff's wages were paid out of funds procured by the town from the Reconstruction Finance Corporation was immaterial on the question involving the relationship between the plaintiff and the town of Forest City. Such relationship was established by contract between the plaintiff and the defendant town of Forest City, and for that reason was a relationship of employee and employer.

"There was error in the judgment reversing the award of the Industrial Commission, and dismissing the proceeding. The judgment is Reversed."

With the decision in this case in mind, it is my thought that the employees employed in the Rapid Treatment Center at Charlotte

would be considered employees of the State Board of Health, an agency of the State of North Carolina. The State of North Carolina is a self-insurer, as allowed under the provisions of the North Carolina Workmen's Compensation Act. Each department or agency of the State of North Carolina is required to pay its Workmen's Compensation benefits from funds allotted to the particular department or agency, and the General Assembly has not made any specific appropriation from which Workmen's Compensation benefits may be paid.

I therefore assume that the State Board of Health would not have sufficient funds allotted to it to absorb any liability which might be created as a result of the employment of the personnel necessary for the operation of the Rapid Treatment Center in Charlotte. In addition to this, the State of North Carolina furnishes no funds in connection with the operation of the Rapid Treatment Center but, on the contrary, it is operated entirely from federal funds.

It is therefore my opinion that Workmen's Compensation Insurance should be purchased from the funds allocated by the Federal Works Agency for the operation of the Rapid Treatment Center or the Federal Works Agency should agree to assume liability for all benefits under the provisions of the North Carolina Workmen's Compensation Act.

PUBLIC HEALTH; CONTROL AND TREATMENT OF VENEREAL DISEASES;
APPOINTMENT OF COUNTY HEALTH OFFICERS AS
DEPUTY STATE HEALTH OFFICERS

2 September, 1943.

Receipt is acknowledged of your letter in which you request the advice of this office relative to the appointment by the State Health Officer of county health officers as deputy state health officers for the purpose of detention and isolation of persons infected with venereal disease.

Section 7193 of Michie's North Carolina Code of 1939, Annotated, provides that state, county and municipal health officers, or their authorized deputies, within their respective jurisdictions, are directed and empowered to carry out the provisions of this section with relation to persons infected with venereal disease.

If you should undertake to appoint county or municipal health officers as deputy state health officers, certain questions would arise which I feel should be called to your attention.

A county or municipal health officer, to my mind, is a public officer, within the meaning of the North Carolina Constitution. A deputy state health officer also could be considered by the courts as a public officer, within the meaning of the Constitution, even though the duties of such deputy state health officer are confined to the detention and isolation of persons infected with venereal disease. The Supreme Court of North Carolina has held that where a person holding a public office qualifies for a second public office, he immediately vacates the first office. You can therefore readily see what a county or municipal health officer would face when you offer

to designate him as a deputy state health officer for the purpose of enforcement of the venereal disease statutes.

Assuming that county and municipal health officers would be willing to take a chance on vacating their offices by accepting an appointment as deputy state health officers, I find another objection, from your standpoint, which I feel should be called to your attention. This is the question of the liability of the State of North Carolina or your Department, as an agency of the State of North Carolina, for workmen's compensation benefits arising out of injuries to this type of personnel while engaged in the performance of their duties as deputy state health officers. To my mind, they would be held to be employees of the State, at least while they are engaged in the performance of their duties as deputy state health officers. The State of North Carolina, as you know, acts as self-insurer and each agency and department is required to carry and absorb its own workmen's compensation liability. The General Assembly of North Carolina makes no specific appropriation from which workmen's compensation benefits may be paid.

I am calling this to your attention in order that you may not be placed in the position of finding yourself confronted with liabilities for which no funds have been provided and which you cannot pay out of the regular appropriation made to your Department by the General Assembly.

STATE OF NORTH CAROLINA
NORTH CAROLINA STATE BOARD OF HEALTH
COMMISSION AS DEPUTY STATE HEALTH OFFICER

TO:, Address

You are hereby authorized, empowered and commissioned as a deputy State health officer, for the purpose of acting as quarantine officer, under the provisions of Sections 7191 to 7198, inclusive, of Michie's North Carolina Code of 1939, Annotated.

This authorization or commission is revocable by me at any time upon notice to you, by registered mail, of such revocation.

Witness my hand, this.....day of....., 19.....

.....
State Health Officer.

PUBLIC HEALTH; OPERATION OF VENEREAL DISEASE TREATMENT CENTER;
WORKMENS COMPENSATION INSURANCE; CONTINGENCY AND
EMERGENCY FUND

19 October, 1943.

Receipt is acknowledged of your letter of October 16 enclosing copy of a letter from Honorable Kenneth Markwell, Regional Director of the Federal Works Agency, Richmond, Virginia, in which he suggests that the liability under the Workmen's Compensation Act, as it relates to the employees at the Rapid Treatment Center at Charlotte, North Carolina, might be taken care of from the contingency and

emergency fund set up under Title 8 of Chapter 530 of the Session Laws of 1943. Mr. Markwell further suggests that the matter of Workmen's Compensation Insurance be left in abeyance without securing insurance policies to cover the employees and that should claims arise for which State funds are not available, to liquidate upon proper showing by the State, consideration would be given to the use of available project funds for the liquidation of the claims.

I do not agree with Mr. Markwell that the matter should be left in abeyance but on the contrary I am of the opinion that Workmen's Compensation Insurance should be provided as early as possible.

The Act setting up the contingency and emergency fund contains a provision that it is to provide for contingency and emergency expenditures for any purpose authorized by law for which no specific appropriation is made or for which inadvertently an insufficient appropriation has been made in the Appropriations Act.

The funds with which the Rapid Treatment Center at Charlotte is operated are furnished entirely by the federal government and are not even deposited with the State Treasurer of this State and the Director of the Budget of the State of North Carolina does not exercise control of these funds. In reality, the federal government is operating the project through the medium of the State Board of Health.

Even if it should be conceded that funds might be allocated from the contingency and emergency fund to cover liability under the Workmen's Compensation Act, it would be necessary that an application be made to the Director of the Budget and if the Director of the Budget approved the request, the matter would then be presented to the Governor and Council of State for their consideration. If the Director of the Budget disapproved the request for the allotment, he would transmit his refusal and his reason therefor to the Governor and Council of State for their information. Of course, I would not undertake to anticipate what the Director of the Budget or the Governor and Council of State might decide in the matter but I am thoroughly convinced that they would be justified in refusing to grant the request for allocation of funds from the contingency and emergency fund.

I do not think this matter should be allowed to continue in its present status for an indefinite period. I am still definitely of the opinion that the Workmen's Compensation Insurance should be purchased from the funds allocated by the Federal Works Agency for the operation of the Rapid Treatment Center.

COUNTIES; DATE OF ADOPTION OF COUNTY BUDGET

3 February, 1944.

I acknowledge receipt of your letter in which you inquire as to the earliest date the board of county commissioners of a county may legally pass and adopt the budget for the various departments of the county government for the ensuing year.

Section 153-117 of the General Statutes of North Carolina requires the heads of the various departments of the county government to

file with the county accountant before the first day of June of each year, among other things, an estimate of the requirements of his department for each object in the ensuing fiscal year. And Section 153-118 requires the county accountant, upon receipt of such statements and estimates, to prepare his estimate of the amounts necessary to be appropriated for the ensuing fiscal year for the different objects of the county and its subdivisions, which shall be termed "budget estimate," and submit the same to the board of county commissioners not later than the first Monday of July of each year. Section 153-120 provides that "it shall be the duty of the board of county commissioners, not later than the fourth Monday in July in each year, to adopt and record on its minutes an appropriation resolution . . . which resolution shall make appropriations for the several purposes of the county and subdivisions thereof, upon the basis of the estimates and statements submitted by the county accountant, such sums as the board may deem sufficient and proper, whether greater or less than the recommendations of the budget estimate." Section 153-119 provides that immediately upon the submission of the budget estimates, and at least twenty days before the adoption of the appropriation resolution, the board shall file the budget estimate in the office of the clerk of the board.

It thus appears that the date upon which the county commissioners may adopt the county budget depends upon the date on which the county accountant under Section 153-118, files the budget estimate with the board of county commissioners, but not later than the first Monday in July, and it further depends how promptly the board of commissioners file the budget estimate with the clerk of the board as required by Section 153-119, as the board must wait at least twenty days after so filing the budget estimate before adopting the appropriation resolution, but not later than the fourth Monday in July in each year. It is, therefore, apparent that the date upon which the budget is adopted by a county depends upon how promptly the county accountant and board of county commissioners act in the particular county.

PUBLIC HEALTH; TUBERCULOSIS; NOTICE TO PERSONS SUFFERING FROM
DISEASE IN COMMUNICABLE FORM; RIGHT OF CITY
HEALTH OFFICER TO ISSUE

21 February, 1944.

Receipt is acknowledged of your letter of February 17 in which you raise the question as to whether the city health officer in a municipality which maintains a health department may give the instructions to persons suffering from tuberculosis in the communicable form as provided for in Section 357 of the Session Laws of 1943.

Section 1 of Chapter 357 of the Session Laws of 1943 provides that any person having tuberculosis in the communicable form who, after being instructed by an agent of the county board of health as to precautions necessary to be taken to protect the members of such person's household or the community from becoming infected by tuberculosis communicated by such person, shall wilfully refuse to follow such

instructions, shall be guilty of a misdemeanor and, upon conviction thereof, shall be imprisoned in the prison department of the North Carolina sanatorium for a period of sixty days for the first offense and for a period of six months for any subsequent offense.

After an inspection of the various statutes relating to the organization of the county board of health and those relating to municipal health organizations, there is some doubt left in my mind as to whether a municipal health officer would be considered as an agent for the county board of health within the meaning of Section 1 of Chapter 357 of the Session Laws of 1943, in the absence of some action taken by the county board of health designating the municipal health officer as its agent for the purpose of giving the instructions provided in Chapter 357.

I would therefore suggest that the county board of health pass an order specifically designating the municipal health officer as its agent for the purpose of giving the instructions provided for in Chapter 357.

DEAD BODIES; CEMETERIES; REMOVAL TO ANOTHER PLACE

6 March, 1944.

Receipt is acknowledged of your letter in which you state that the body of a woman was interred twelve years ago in a public cemetery in a plot owned by her brother. The woman's husband is dead and some of the children want the body of their mother disinterred and removed from this plot and cemetery to another cemetery. The brother who has charge of the plot and some of the children do not want the body removed from its present resting place. You desire to know whether, in my opinion, the health officer and local registrar should issue a disinterment and removal permit under these circumstances.

Section 14-150 of the General Statutes of North Carolina provides that if any person shall, without due process of law or the consent of the surviving husband or wife or the next of kin of the deceased and of the person having the control of such grave, open any grave for the purpose of taking therefrom any dead body or any part thereof buried therein or anything interred therein, he shall be guilty of a felony and, upon conviction thereof, shall be fined or imprisoned, or both, at the discretion of the court.

The Supreme Court of North Carolina, in the case of *State v. McLean*, 121 N. C. 589, held that this statute is absolutely clear in the language employed and is directed against all who disturb the last resting place of the dead except those who act under the due process of law or who procure the permission to open the grave and remove the body from the surviving husband or wife or the next of kin of the deceased and of the person having control of the grave. In this particular case, the court held that the mayor or other town officers, counseling their subordinates to remove bodies, are liable under

this section although they were honestly mistaken as to the scope of their official power.

From the facts outlined in your letter, no person would have authority to remove the body of the woman referred to until the consent of her next of kin and of the person having control of the grave have been secured. It clearly appears from your letter that this consent has not been secured. It is therefore my opinion that no official should undertake to issue a disinterment and removal permit until such consent is properly secured. Any action taken without securing this permission might result in subjecting the persons or officials taking such action to the penal provisions of the section above referred to.

ANIMAL DISEASES; DOGS; RABIES; VACCINATION; INSPECTION;
INSTITUTION OF CAMPAIGN OF VACCINATION

24 March, 1944.

Receipt is acknowledged of your letter of March 18 in which you raise the question as to who has the authority to institute a campaign of vaccination under the provisions of the Rabies Act.

Section 106-367 of the General Statutes of North Carolina (Section 4, Chapter 122, Public Laws 1935) provides that the vaccination of all dogs in the counties shall begin annually on April 1 and shall be completed within ninety days from the date of beginning the vaccination in the several counties.

Section 106-366 of the General Statutes of North Carolina makes it the duty of the county health officer of the county in a county where a health officer is employed or the board of county commissioners where no health officer is employed to appoint, subject to the approval and confirmation of the Commissioner of Agriculture, a sufficient number of inspectors to carry out the provisions of the Rabies Act.

It appears to me that the original Rabies Act clearly contemplated an annual vaccination of all dogs and that all that was required to begin the campaign was action on the part of the county health officer or the board of county commissioners as the case might be in appointing the rabies inspectors. There is nothing in the Act itself which requires any action to be taken by the local board of health.

PUBLIC HEALTH; VENEREAL DISEASES; QUARANTINE; APPLICATION
OF LAW TO MINORS

20 May, 1944.

You have requested my opinion as to whether the quarantine and isolation laws relating to venereal diseases are applicable to minors.

Part I of Article 19 of Chapter 130 of the General Statutes (Sections 130-204, et seq.) is the statutory authority for isolating persons infected with a venereal disease. These statutes apply to all persons and it is my opinion that the use of the term "persons" would include

minors. Therefore, it is my opinion that the statute applies to any person infected, regardless of age.

Your attention is directed to Section 130-212, making the violation of the article a misdemeanor. If the person who violates the article is under sixteen years of age, then the juvenile court would have exclusive jurisdiction. G. S. 110-21.

PUBLIC HEALTH; VITAL STATISTICS; LOCAL REGISTRAR; RIGHT TO
ISSUE CERTIFIED COPIES

24 May, 1944.

Receipt is acknowledged of your letter of May 23 in which you request my opinion as to whether a local registrar of vital statistics has the authority to issue certified copies of the certificates in his possession.

I have inspected Article IX of Chapter 130 of the General Statutes of North Carolina, which deals with vital statistics, and it is my opinion that a local registrar of vital statistics is not given the power to issue certified copies of the certificates in his possession. It appears to me that the only officials authorized to issue certified copies of the certificates would be the State Registrar and the Register of Deeds of the county in which the birth or death occurred. It further appears to me that it would be preferable that the certified copy be secured from the State Registrar, as provision is made in the statute that any copy of the record of a birth or death, properly certified by the State Registrar, shall be prima facie evidence in all courts and places of the facts therein stated.

PUBLIC HEALTH; MUNICIPALITIES; INSPECTION OF MEATS

20 June, 1944.

You inquire as to whether in my opinion Chapter 244 of the Public Laws of 1937 affects the right of municipalities to inspect meat pursuant to the authority contained in Chapter 181 of the Public Laws of 1925.

Section 3 of Chapter 181 of the Public Laws of 1925 (G. S. 106-161) provides:

"Municipal corporations shall have power and authority under this article to establish and maintain the inspection of meat and meat products, at establishments located within their corporate limits, and county commissioners shall have power and authority to establish and maintain inspection of meats and meat products at establishments not located in municipal corporations, but located within the boundaries of their county."

Chapter 244 of the Public Laws of 1937 (G. S. 130-264 to 130-267, inclusive) authorizes the State Board of Health to prepare and enforce rules and regulations governing the sanitation of meat markets, abattoirs and other places where meat or meat products are prepared, handled, stored, or sold and provide a system of scoring and grading such places. There is a proviso contained in Section 1 of the

chapter (G. S. 130-264) to the effect that the provisions of the chapter shall not apply to farmers and others who raise, butcher and market their own meat or meat products. Section 4 of the Act (G. S. 130-267) provides that nothing in the Act shall in any way repeal or affect Chapter 181 of the Public Laws of 1925 or the rules and regulations promulgated thereunder.

It is therefore my opinion that the right of municipal corporations to establish and maintain the inspection of meat and meat products pursuant to Chapter 181 of the Public Laws of 1925 would in no way be affected by the proviso contained in Chapter 244 of the Public Laws of 1937 exempting farmers and others who raise, butcher and market their own meat or meat products. Of course, the proviso would apply to any action taken by the State Board of Health pursuant to the authority contained in Chapter 244 of the Public Laws of 1937.

OPINIONS TO LOCAL GOVERNMENT COMMISSION

COUNTY A.B.C. BOARDS; POWER TO BORROW MONEY; APPLICATION OF LOCAL GOVERNMENT ACT

16 September, 1942.

I have your letter of September 15, and agree with your opinion that the Local Government Commission is not required to approve notes for money borrowed by Alcoholic Beverage Control Boards, as authorized by subsection (i), Chapter 49, of the Public Laws of 1937. These boards do not have power to levy taxes ad valorem and could not pledge the faith and credit of the county for the payment of any loans made.

MUNICIPAL ELECTIONS; ELECTION MUST BE HELD, REGARDLESS OF NUMBER OF CANDIDATES

18 March, 1943.

I acknowledge receipt of your letter of the 16th inst., in which you inquire if it is apparent that there will be no candidates for office except the incumbents, is it necessary for such incumbent candidates to file and hold an election.

The subject of general municipal elections is covered by Article III, Chapter 56, of Michie's Code entitled "Municipal Corporations," Sections 2649 through 2672.

There is no provision in the general law for municipal primaries so that, in the absence of a charter provision to the contrary, it is not necessary to hold a municipal primary. Likewise, there is no time fixed within which candidates for election are required to file; a person may become a candidate as late as election day, notwithstanding the fact that his name has not been placed upon a ballot, and the voters may vote for such person by writing in his name on the ballot.

I am of the opinion that it would be necessary for an election to be held, notwithstanding the fact that no candidates have appeared in opposition to the incumbents, as a candidate must receive a majority of the votes cast in order to be elected to the office for which he is running.

I am assuming that the municipality for which you are making this inquiry is operating under the general municipal law and has no charter provision regulating its election.

COUNTY FINANCE ACT; TIME WITHIN WHICH BONDS MAY BE ISSUED

2 September, 1943.

Receipt is acknowledged of your letter of August 23 in which you state that a county entered an order authorizing the issuance of refunding bonds pursuant to a refunding plan for outstanding bonds. The order was passed and took effect on March 1, 1937. You desire to know whether, in my opinion, the bonds authorized by this order may now be legally issued.

Under the provisions of Section 2(d) of Chapter 231 of the Public Laws of 1939, the following proviso was added to Section 32 of the County Finance Act:

"Provided, however, that funding or refunding bonds heretofore or hereafter authorized may be issued at any time within five years after the order takes effect."

The order authorizing the bonds about which you inquire took effect on March 1, 1937 and, under the provisions of the amendment above referred to, these bonds could have been issued at any time prior to March 1, 1942.

Section 1 of Chapter 325 of the Session Laws of 1943 provides that any bonds of a county which have heretofore been authorized to be issued by an order passed pursuant to the provisions of the County Finance Act, as amended, and which have not been issued at the time of the ratification of the Act and the time within which such bonds may be issued under the provisions of Section 32 of the County Finance Act will expire before July 1, 1945, may be issued in accordance with all other provisions of law at any time prior to July 1, 1945.

Chapter 325 of the Session Laws of 1943 was ratified on the 1st day of March, 1943. It therefore appears that the time limit within which the bonds about which you inquire could have been issued had expired one year prior to the time of the ratification of Chapter 325 of the Session Laws of 1943.

From the language used in Section 1 of the 1943 Act, it appears to me that it was the intention of the Legislature to continue in force all bond orders which had not expired on March 1, 1943 and which would expire between March 1, 1943 and July 1, 1945. It does not appear to me that the General Assembly intended to give life to all bond orders which had expired prior to March 1, 1943.

It is therefore my opinion that Chapter 325 of the Session Laws of 1943 would not have the effect of extending the time during which bonds might be issued pursuant to the order mentioned in your letter.

COUNTIES; CAPITAL RESERVE ACT; DEPOSIT OF FUNDS BY TREASURER

18 January, 1944.

I acknowledge receipt of your letter in which you state that the Board of Commissioners of a county in the State has passed an order in proper form, pursuant to Section 5 of Chapter 593 of the Session Laws of 1943, known as the County Capital Reserve Act, authorizing and setting up a capital reserve fund; that certain funds belonging to the county school board, at the request of the board, were designated to be deposited in the capital reserve fund; that the order establishing the capital reserve fund and the designation of the funds in question to be deposited therein has been approved by the Local Government Commission. You further state that the Treasurer, who is the financial officer of the county, has declined to make the deposit on the ground that the county board of education has not drawn a voucher on the

school funds so that the transaction may be recorded in the same manner as a transfer or disbursement of other school funds.

You inquire as to whether or not the treasurer may be required to deposit the funds in question in the designated depository to the credit of the county capital reserve fund without a voucher being drawn covering the funds, signed by the chairman and secretary of the county board of education.

While Section 6 of Chapter 593 of the Session Laws of 1943, authorizing county capital reserve funds, provides:

"Upon receipt of the notice of such approval the clerk shall thereupon notify the financial officer of the county who shall immediately deposit in the designated depository the monies stated as available in said order for the capital reserve fund. . . ."

in view of Section 20, Subsection 2, of the School Machinery Act, being Chapter 358 of the Public Laws of 1939, as amended, which requires:

"All county and district funds, from whatever source provided, shall be paid out only on warrants signed by the chairman and secretary of the board of education for counties. . . ."

it occurs to me that there is considerable merit to the County Treasurer's argument that a warrant should be issued covering the funds, signed by the chairman and secretary of the county board of education.

And it seems to me that this is the better course to pursue, and in the instant case there should be no objection as the county board of education requested that the funds in question be deposited in the capital reserve fund of the county.

SCHOOLS; LOANS FROM STATE LITERARY AND SPECIAL BUILDING FUNDS; FUNDING OR REFUNDING BONDS FOR SUCH LOANS

24 March, 1944.

In your letter of March 18 you state that in 1936 a refunding plan was prepared and presented to the holders of outstanding bonds of Polk County providing for the issuance of new bonds in exchange for certain outstanding bonds and that the plan provided that like application of its provisions would be made to certain special building fund notes held by the State Board of Education. The State Board of Education accepted the terms of the plan and pursuant thereto new refunding notes were executed and exchanged for the old notes held by the State Board of Education.

You further state that the law under which such refunding notes were authorized was presumably Chapter 399 of the Public Laws of 1935. The County of Polk now desires to sell refunding bonds to discharge the obligations of the State Board of Education. The question has arisen as to the legality of the issuance of the refunding notes above referred to.

It appears that prior to the enactment of Chapter 399 of the Public Laws of 1935 (G. S. 115-215, -216) the State Board of Education had no authority to participate in refunding plans or to accept funding

or refunding bonds or notes of a unit in payment of interest on or the principal of notes evidencing loans from the State Literary and Special Building Funds. From an inspection of the provisions of Chapter 399 of the Public Laws of 1935, it does not appear to me to be a statute conferring authority on units to issue funding or refunding bonds but, on the contrary, is authority given to the State Board of Education to accept funding or refunding bonds and to participate in general refunding plans or programs of counties. If this is true, the power of counties to issue refunding bonds or notes is confined to the authority contained in the County Finance Act.

It is my opinion that Chapter 399 of the Public Laws of 1935 does not, within itself, authorize the issuance of refunding bonds by counties and that the power of counties to issue refunding bonds or notes is confined to the authority contained in the County Finance Act.

OPINIONS TO STATE BOARD OF ELECTIONS

ELECTION LAWS; APPLICATION FOR ABSENTEE BALLOTS; BY WHOM SIGNED

7 October, 1942.

In my opinion application for official absentee ballots to be voted in General Election may be signed by the voter in person or the husband, wife, brother, sister, parent or child of the voter. This conclusion arrived at after careful consideration of the provisions of the statute.

ELECTION LAWS; BALLOTS BEARING FACSIMILE OF CHAIRMAN'S SIGNATURE; SUBSEQUENT RESIGNATION OF CHAIRMAN

17 October, 1942.

When ballots printed within time prescribed by law bearing facsimile signature of chairman of the county board of elections who subsequently resigns and new chairman appointed, not necessary that ballots be recalled and new ballots printed. Ballots issued by former chairman bearing his facsimile signature would in my opinion be valid and should be counted if voted.

ELECTION LAWS; ELECTOR MAY DEMAND REMOVAL OF HIS NAME

21 October, 1942.

Registered elector has a right to demand in person his name removed from registration books if demand made while books open.

OPINIONS TO STATE BOARD OF CHARITIES AND PUBLIC WELFARE

COURTS: CRIMINAL LAW; JUDGMENT; POSTPONEMENT OF SENTENCE

9 November, 1942.

At our conference this morning you inquired as to the power of a trial judge to have a female defendant go to what would be termed as a detention center for an examination and investigation in order to determine whether such defendant should be imprisoned or dealt with under the probation statutes, or otherwise.

A trial judge, when a defendant pleads guilty or is convicted, may immediately pronounce judgment or he may continue the prayer for judgment to a definite time or until the next criminal term of the court. Of course a trial judge would have no authority to commit a defendant who has pled guilty or been convicted to a detention center. However, the trial judge would have the authority to continue prayer for judgment until the next term of court or until a definite time on condition that such defendant go to the detention center for investigation and whatever medical treatment is necessary. If a defendant did not agree that prayer for judgment would be continued on this condition, the trial judge could immediately pronounce whatever judgment he saw fit. If prayer for judgment was continued and the defendant did not comply with the instructions of the court, such defendant could be sentenced at the time prayer for judgment was continued to in the same manner as if prayer for judgment had not been continued.

If a defendant goes to the detention center and it is determined that such defendant should not be imprisoned, the court would have the power to accept the recommendation of the authorities operating the detention center and place the defendant on probation, under the provisions of our probation statutes, or would have the right to impose a prison sentence suspended upon reasonable conditions to be determined by the court.

INCOMPETENCE; APPOINTMENT OF GUARDIAN OR TRUSTEE; COST

5 December, 1942.

I acknowledge receipt of your letter of November 25, in which you state that in many cases persons are eligible for Old Age Assistance who are incompetents, and that your policy is to make payments in such cases to legal guardians appointed by a court of competent jurisdiction. You raise the following questions:

"1. In order to secure the appointment of a guardian when an applicant is found to be incompetent to manage his own affairs, is it necessary that such applicant be legally adjudged non compos mentis or is it possible to have such an applicant merely adjudged incompetent?

"2. May the Clerk of Court find, for the purpose of appointing a guardian, that the individual concerned is incompetent or must this action be taken by a jury?

"3. What fee may be charged for the appointment of a guardian in the case of an old age assistance applicant?"

Section 2285 of the Consolidated Statutes will answer the questions raised by you.

In answer to your first question, the latter portion of said section provides:

"Where the person is found to be incompetent from want of understanding to manage his affairs, by reason of physical and mental weaknesses on account of old age and/or disease and/or like infirmities, the clerk of the court may appoint a trustee instead of guardian of said person. The trustee appointed shall be subject to the laws now or which hereafter may be enacted for the control and handling of estates by guardians."

In answer to your second question, the first paragraph of Section 2285 specifically provides that it is necessary for an application to be filed with the Clerk of the Superior Court, whereupon the Clerk shall issue an order, upon notice to the supposed idiot, etc., to the sheriff of the county and commanding him to summon a jury of twelve men to inquire into the state of such supposed idiot, inebriate or lunatic. It, therefore, appears that the Clerk is not authorized to name a guardian or trustee until a jury has determined that the alleged idiot, inebriate, etc., is a fit person requiring the appointment of a trustee or guardian.

In answer to your third question, it is impossible to state the exact amount of cost incident to a proceeding to appoint a guardian. The cost would vary in different cases, depending on the number of witnesses and whether or not a court stenographer would be required to take the evidence, and the length of time in which it takes to conduct the hearing, and the amount of the jury fees and sheriff's fees, etc. I am of the opinion that the cost of the average case would be in the neighborhood of \$20.00.

AID TO DEPENDENT CHILDREN; NIECE RECEIVING AID FOR DEPENDENT
INFANT AUNT; NOT ENTITLED TO AID

14 January, 1943.

I acknowledge receipt of your letter of the 12th inst., inquiring whether or not a niece may receive Aid to Dependent Children for her dependent infant aunt.

Section 35 of Chapter 288 of the Public Laws of 1937 defines the term "dependent child" and sets out what persons are to be construed as coming within that definition. No class of persons other than those mentioned in Section 35 are entitled to the benefits of the Act for dependent children. This Act does not include a "dependent infant aunt."

It is, therefore, my opinion that a niece is not entitled to receive aid to dependent children for her dependent infant aunt.

ADOPTION LAWS; CONSENT OF PARENTS TO ADOPTION; EFFECT OF DIVORCE DECREE IN WHICH CUSTODY OF CHILD IS AWARDED TO MOTHER

6 March, 1943.

You inquire as to whether it is necessary to make the father of a child sought to be adopted a party to the proceeding where the mother has secured a divorce from the father and has been awarded the custody of the child.

Under the rule laid down by our Supreme Court, an adoption proceeding is in derogation of the common law and must be strictly construed. *Grimes v. Grimes*, 207 N. C. 778. Under our statutes relating to adoption, the parents must be parties of record to the proceeding unless they have (1) signed a release of all rights to the child to some person, agency, or institution, (2) have consented to the adoption, as specified in Section 191(5) of the 1941 Supplement to Michie's North Carolina Code of 1939, or (3) where a juvenile court has declared the parents unfit to have the care and custody of the child or has declared the child to be an abandoned child. The Supreme Court of North Carolina has very strictly construed the adoption statutes, especially as to the consent of the natural parents to the adoption.

In the case of *Ward v. Howard*, 217 N. C. 201, the court held that the consent of the living parent or proof of the abandonment of the child is necessary to an adoption and must be made to appear to the court as a jurisdictional matter.

In the case of *In Re Holder*, 218 N. C. 136, the court upset an adoption where the mother of the child had signed an application for the admission of the child into a children's home and the application contained an agreement that the home might procure the adoption of the child by such person or persons as it might choose without further notice to the mother and that the home agreed to the adoption of the child. The adoption in the *Holder Case* was completed prior to the enactment of Sections 191(4) and 191(10) of Michie's North Carolina Code of 1939 Annotated, as amended by Chapter 281 of the Public Laws of 1941.

In the case where the mother of the child sues the father for a divorce and in the divorce action the custody of the child of the marriage is awarded to the mother, it is my opinion that the father is not deprived of all his rights to the child but is only deprived of the temporary custody of such child. Under the North Carolina Law, the judge hearing a divorce action may make such orders respecting the care, custody, tuition, and maintenance of the minor children of the marriage as may be proper and may, from time to time, modify or vacate such orders. He may commit the custody and tuition to the father or the mother as may be thought best, or to one parent for a limited time, and after the expiration of that time, then to the other parent.

You can, therefore, readily see that even though the custody of a child is awarded to the mother in a divorce proceeding, the order is

subject to modification at any time by the court. It is my opinion that it is necessary that the consent of the father be obtained in cases of this kind or that he be served with process in the manner provided in the adoption statutes.

ADOPTION LAWS; NECESSITY FOR CONSENT WHERE CHILD IS FOUND BY
JUVENILE COURT TO BE AN ABANDONED CHILD OR PARENTS OR
GUARDIAN DECLARED UNFIT TO HAVE CARE AND
CUSTODY OF CHILD

12 March, 1943.

You inquire as to whether a consent is necessary to an adoption where the child is found by the Juvenile Court to be an abandoned child or where the Juvenile Court has declared the parents or guardian unfit to have the care and custody of such child.

Section 191(10) of the 1941 Supplement to Michie's North Carolina Code of 1939 provides:

"In all cases where a juvenile court has declared the parent or parents or guardians unfit to have the care and custody of such child, or has declared the child to be an abandoned child, such parent, parents, or guardians shall not be necessary parties to any action or proceeding under this Chapter nor shall their consent be required. But in the event that the child be of age beyond the jurisdiction of the juvenile court, then on notice to the parent, parents, or guardian the court in the adoption proceedings is hereby authorized to determine that an abandonment has taken place, provided that if the parent, parents, or guardian deny that an abandonment has taken place, this issue of fact shall be determined as provided in section six hundred and thirty-four of the Consolidated Statutes, and if abandonment be determined, then the consent of the parent, parents, or guardian shall not be required."

This Section, of course, eliminates the necessity of making the parents or guardians parties to an adoption proceeding where the Juvenile Court has declared such parents or guardians unfit to have the care and custody of the child sought to be adopted, and it also eliminates the requirement as to their consent. This rule would also apply where the child has been declared by the Juvenile Court to be an abandoned child. Thus, we are left with the question as to whether, in such cases, the consent of any person is required.

Section 191(4) of Michie's North Carolina Code of 1939 Annotated, as amended by Section 1 of Chapter 281, of the Public Laws of 1941, provides:

"The parents or surviving parent or guardian or the person or persons having charge of such child, or with whom it may reside, must be a party or parties of record to this proceeding: Provided, that when the parent, parents, or guardian of the person of the child has signed a release of all rights to the child, the person, agency, or institution to which said rights were released shall be made a party to this proceeding and it shall not be necessary to make the parent, parents, or guardian parties. Provided, further, that when such parent, parents, or guardian has consented to an adoption as specified in Section 191(5), he shall not be a necessary party of record to this proceeding."

This Section requires that the person or persons having charge of the child or with whom it resides must be a party or parties to the adoption proceeding in case there are no parents or guardian. The proviso contained in this Section did not eliminate any persons except parents or guardians. The provisions of Section 191(10), above referred to, eliminate only parents or guardians. Section 191(5) of the 1941 Supplement to Michie's North Carolina Code of 1939 provides that upon the examination of the written report of the Superintendent of Public Welfare, or of a duly authorized representative of an agency described in Section 191(3) of Michie's North Carolina Code of 1939, and with the consent of the parent or parents, if living, or of the guardian, if any, or of the person with whom such child resides or who may have charge of such child, except in cases hereinafter provided for, the court, if it be satisfied that the petitioner is a proper and suitable person and that the child is a proper subject for adoption, and that the adoption is for the best interests of the child, may tentatively approve the adoption and issue an order giving the care and custody of the child to the petitioner. This Section contains a proviso to the effect that when the parents or guardian of the person of the child has, in writing, surrendered the child to a duly licensed child placing agency, or to the Superintendent of the Public Welfare of the county and has, in writing, consented to the adoption of the child by any person or persons to be designated by said agency or officer, this shall be deemed a sufficient consent and no further consent of the parents or guardian to a subsequent specific adoption is necessary. Even this Section does not specifically eliminate the apparent necessity of making the person or persons having charge of the child, or with whom it may reside, parties to the adoption proceeding or require the consent of such person or persons to the adoption.

Our Supreme Court in the Case of *In Re Holder*, 218 N. C. 136, citing the case of *Grimes v. Grimes*, 207 N. C. 778, held that an adoption proceeding is in derogation of the common law and must be strictly construed.

In the Case of *Ward v. Howard*, 217 N. C. 201, the court referring to the statutes relating to the establishment and jurisdiction of juvenile courts, held that under such statutes the Juvenile Court has no power to place a child anywhere for adoption and that the portion of the order under consideration in that case attempting to place the child out for adoption was ineffective and void and did not in any way affect the right of the mother or eliminate the necessity of her consent. Of course the case of *Ward v. Howard* was decided prior to the enactment of Chapter 285 of the Public Laws of 1941, which includes Section 191(10) of the 1941 Supplement to Michie's North Carolina Code of 1939.

It is my opinion that it is advisable, in all cases where a Juvenile Court has declared the parents or guardian of a child unfit to have the care and custody of such child, or has declared the child to be an abandoned child, to make the person or persons having charge of the

child or with whom it may reside at the time of the institution of the adoption proceedings parties to the proceeding or require the consent of such person or persons. Too many requirements in an adoption proceeding will not, within itself, invalidate such a proceeding, but the absence of any requirement which the court might deem essential would invalidate such proceeding. Therefore, I deem it essential to include anything which the court might possibly consider as an essential requirement.

ADOPTION LAW; CHILDREN BORN IN WEDLOCK; NECESSITY FOR CONSENT
WHERE HUSBAND DENIES PATERNITY OF CHILD

25 March, 1943.

You state in your letter of March 18 that in a number of adoption proceedings the child sought to be adopted was born to a married woman who, although not legally separated nor divorced from her husband, has actually lived separate and apart from her husband for some time prior to the child's birth and the mother admits that another man is the child's father. You desire to know whether, in cases of this kind, it is necessary that the husband of the mother be made a party to the adoption proceeding or give his consent thereto.

When a child is born in wedlock, the husband and wife living in the same house, legitimacy is conclusively presumed. *State v. Green*, 210 N. C. 162. The ancient rule of the common law that if the husband was within the four seas, no proof of nonaccess was admissible, has been modified in this State only to the extent that the presumption of legitimacy may be rebutted by evidence tending to show the husband could not have had access or was impotent. *State v. McDowell*, 101 N. C. 734. Illegitimacy is an issue of fact resting upon proof of the impotency or nonaccess of the husband. *State v. Liles*, 134 N. C. 735.

The question of the legitimacy or illegitimacy of the child of a married woman rest on decided proof as to the nonaccess of the husband and the facts must be generally left to the jury for determination. Access between man and wife is always presumed until otherwise plainly proved and nothing is allowed to impugn the legitimacy of a child short of proof by facts showing it to be impossible that the husband could have been its father. *Ewell v. Ewell*, 163 N. C. 233. A child is in law legitimate if born within matrimony though born within a week or day after marriage.

It is, therefore, my opinion that in all adoption proceedings, where the child sought to be adopted was born in wedlock and no adjudication has been made to the effect that the husband of the mother is not the father of the child, it is necessary that the husband of the mother be made a party to the proceeding or his consent be secured to the adoption even though both the mother and her husband deny that the husband is the father of the child.

CRIMINAL LAW; BASTARDY; JUVENILE COURTS; JURISDICTION WHERE
DEFENDANT UNDER SIXTEEN YEARS OF AGE; RIGHT OF COURT TO
REQUIRE BOY UNDER SIXTEEN YEARS OF AGE TO
SUPPORT ILLEGITIMATE CHILD

25 March, 1943.

You inquire as to the right of a juvenile court to require a father, who is under 16 years of age, to contribute to the support of his illegitimate child.

Section 276(a) of Michie's North Carolina Code of 1939 Annotated provides that any person who wilfully neglects or refuses to support his or her illegitimate child shall be guilty of a misdemeanor and subjects to the penalties hereinafter provided.

Section 276(c) provides that proceedings to establish the paternity of the child must be commenced within three years after the birth of such child. Section 276(g) authorizes the court, upon the determination of the issue as to the paternity of the child and that the parent has failed or refused to support said child, to enter certain types of judgments or orders requiring the parent to support such child. Where a child under 16 years of age is charged with the commission of a crime, the juvenile court has exclusive jurisdiction. See Sections 5039 and 5047 of Michie's North Carolina Code of 1939. State v. Burnett, 179 N. C. 735.

Section 5047 of Michie's Code provides as to what disposition may be made of the child by the juvenile court and Section 5050 provides that when a child is placed on probation, the court shall determine the conditions of probation which may be modified at any time. This Section further provides that the condition of probation shall be such as the court shall prescribe and may include, among other conditions, payments for the support of any lawful dependents, as required by the court. This provision, to my mind, would give the juvenile judge the right to require a person under 16 years of age to make payments for the support of his illegitimate child if the court finds that such person is the father of the illegitimate child and that he has wilfully failed and refused to support it.

PENSIONS; OLD AGE ASSISTANCE; DEATH OF ELIGIBLE
RECIPIENT AFTER RIGHTS ACCRUE

26 March, 1943.

Receipt is acknowledged of your letter of March 23 relative to a revision in your policy in handling checks payable to eligible recipients who die after their rights accrue and become fixed with respect to a particular grant but before the recipient actually receives the voucher covering payment.

Section 5018(15) of Michie's North Carolina Code of 1939 Annotated provides in part that the award, when effective, shall thereafter be paid in advance monthly to the applicant. Thus, on the first day of each month an eligible recipient would be entitled to the amount of the assistance award for that particular month. I can, therefore, see no objection to your policy being revised in the manner set out in your

letter, with the exception that, in my opinion, the words "guardian" and "trustee" should not be used. I do not think these words would be applicable to the situation where a person has died before actually receiving the check covering the monthly payment of assistance. I would suggest that the following language be used: "And the check for the month may be endorsed by the Clerk of the Superior Court or a duly appointed and qualified executor or administrator of the estate of the recipient."

JUVENILE COURTS; RIGHT TO COMMIT CHILD TO JAIL

12 April, 1943.

You have forwarded to this Office for consideration a letter from the jailor of Halifax County, in which he raises the question as to the right of the Judge of a juvenile court to commit a child to the county jail.

Under the rules laid down by the Supreme Court of North Carolina in the cases of *State v. Burnet*, 179 N. C. 735, and *State v. Coble*, 181 N. C. 554, the Superior Court has exclusive original jurisdiction in all cases arising under the provisions of the Child Welfare Act and the juvenile court was created as a separate part of the Superior Court for the hearing of all such matters and causes. Children under 14 years of age are not indictable as criminals but in case of delinquency, must be dealt with as wards of the State, to be cared for, controlled and disciplined with a view to their reformation. Children between the ages of 14 and 16, when charged with the commission of felonies in which the punishment cannot exceed imprisonment for more than ten years, are committed to the juvenile court for investigation and if the circumstances require it, may be bound over to be prosecuted in the Superior Court at term under the criminal law appertaining to the charge. Children of 14 years, and over, when charged with felonies in which the punishment may be more than ten years imprisonment, are subject to prosecution for crimes, as in the case of adults.

In matters investigated and determined by juvenile courts, no adjudication of the court is denominated a conviction and no child dealt with under the provisions of the Act may be placed in any penal institution or other place where such child may come in contact with adults charged with or convicted of crime.

Section 5048 of Michie's North Carolina Code of 1939 Annotated specifically outlines the method to be used by juvenile courts in disposing of children who are dealt with by the juvenile court. This statute is as follows:

"No child coming within the provisions of this article shall be placed in any penal institution, jail, lockup, or other place where such child can come in contact at any time or in any manner with any adult convicted of crime and committed or under arrest and charged with crime. Provisions shall be made for the temporary detention of such children in a detention home to be conducted as an agency of the court for the purposes of this article, or the judge may arrange for the boarding of such children tem-

porarily in a private home or homes in the custody of some fit person or persons subject to the supervision of the court, or the judge may arrange with any incorporated institution, society, or association maintaining a suitable place of detention for children for the use thereof as a temporary detention home.

"In case a detention home is established as an agency of the court it shall be furnished and carried on as far as possible as a family home in charge of a superintendent or matron who shall reside therein. The judge of the juvenile court may, with the approval of the state board of charities and public welfare, appoint a matron or superintendent, or both, and other necessary employees for such home in the same manner as probation officers are appointed under this article, their salaries to be fixed and paid in the same manner as the salaries of probation officers. The necessary expense incurred in maintaining such detention home shall be a public charge.

"In case the judge shall arrange for the boarding of children temporarily detained in private homes, a reasonable sum for the board of such children while temporarily detained in such homes shall be paid by the county in which such child shall reside or may be found.

"In case the judge shall arrange with any incorporated institution, society or association, for the use of a detention home maintained by such institution, society or association, he shall enter an order which shall be effectual for that purpose and a reasonable sum shall be appropriated by the county commissioners for the compensation of such institution, society, or association for the care of children residing or found within the county, who may be detained therein."

From an inspection of this statute and from its interpretation in the cases above referred to, you can readily see that the judge of a juvenile court would not be justified in committing a child to a jail where the child would come in contact at any time or in any manner with any adult convicted of crime and committed or under arrest and charged with crime.

I am sure if the jailor of Halifax County will call the attention of the judge of the juvenile court to the provisions of the statute and the cases construing said statute, he will immediately see that he is not authorized to make a commitment to the common jail where the child would come in contact with adult criminals.

MERIT SYSTEM ACT; LEAVES OF ABSENCE; CHAPTER 121 OF THE
PUBLIC LAWS OF 1941

14 April, 1943.

You inquire in your letter, and again by telephone, as to the effect of the provisions of Chapter 121 of the Public Laws of 1941, entitled "An Act to provide for leaves of absence without compensation for State and local officials absent from their duties by reason of military and naval service, protracted illness, or other causes," on the provisions of the North Carolina Merit System Act passed by the General Assembly of 1941, and in particular as to whether or not, in view of said Chapter 121, the appointing power is required to name the

substitutes from the "register containing the list of eligibles for positions in order of their final ratings in the merit examination conducted by the Merit System Council."

I call your attention to the fact that Chapter 121 of the Public Laws of 1941 provides for leaves of absence without compensation for *State and local officials* absent from their duties by reason of military and naval service, etc., and is not an Act to provide for the filling of vacancies but provides only for taking care of the duties of such officials when they are away on leave of absence. Each section of this Act begins with the words any elective or appointive official, it therefore, provides for leaves of absence for *officials* only as distinguished from *employees*.

In Sections 2 and 3, which provide for county and municipal officials respectively, each of said sections provides "may appoint any qualified citizen" as acting official or substitute for the period of the official's leave of absence. I think that the Legislature in saying any "qualified citizen" intended that the person named to take over the duties of the official on leave of absence should be a person qualified to fill such position and that where one of the qualifications of filling such position is the taking and passing the examination conducted by the Merit System Council, such person should be taken from the register of the eligibles for such position.

I am of the opinion that the Legislature in enacting Chapter 121 did not intend to disturb those provisions of the Merit System Act requiring persons employed in the various departments and agencies of the State mentioned in said Merit System Act to have successfully passed the examination, and from the register of eligibles. I am of the opinion that the appointing authorities are required to continue to name persons from the registered eligibles in those departments and agencies set out in the Merit System Act.

ADOPTION; SEPARATION OF CHILD UNDER SIX MONTHS OF AGE FROM
MOTHER; RELEASE OF CUSTODY AND CONTROL BY DEED;
ILLEGITIMATE CHILD BORN IN STATE WHERE MOTHER
DOES NOT HAVE LEGAL SETTLEMENT

17 April, 1943.

You state in your letter of April 15 that sometime ago, in Buncombe County, an unmarried mother who was a resident of the State of Florida, gave birth to a child in Buncombe County, and that the mother undertook, by means of a deed executed under the provisions of Section 2151 of Michie's North Carolina Code of 1939, Annotated, to transfer the care, custody and control of the child, who was then under six months of age, to a resident of Buncombe County. You desire to know whether, in my opinion, this action on the part of the mother would eliminate the necessity of compliance with the provisions of Sections 5067 (i) to 5067 (p), inclusive, of Michie's North Carolina Code of 1939, Annotated, in case an adoption proceeding should be instituted involving this child.

Section 191 (1) of Michie's North Carolina Code of 1939, Annotated, provides, in part, that in every instance when the parent, guardian or custodian of the child is not a citizen or resident of the State of North Carolina at the time of filing of petition for adoption, or where the child has been brought into the State for the purpose of placing and adoption by a parent, person, agency, institution or association, the provisions of Chapter 226 of the Public Laws of one thousand nine hundred thirty-one, which is sections 5067 (i) to 5067 (p), inclusive, of Michie's Code, must be complied with before the child is eligible for adoption.

Section 5067 (1) provides:

"No person, agency, association, institution or corporation shall accept, for the purpose of placing him out or procuring his adoption, any child, either legitimate or illegitimate, born in this State of parents who have not established legal settlement in the State, without first obtaining the written consent of the State Board of Charities and Public Welfare."

Section 4445 makes it unlawful for any person to separate or aid in separating any child under six months old from its mother for the purpose of placing such child in a foster home or institution, unless the consent, in writing, for such separation shall have been obtained from the Clerk of the Superior Court and the County Health Officer of the County in which the mother resides or of the County in which the child was born.

Section 2151 of Michie's North Carolina Code of 1939, Annotated, provides:

"And father, though he be a minor, may, by deed executed in his lifetime and with the written consent and privy examination of the mother, if she be living, or by his last will and testament in writing, if the mother be dead, dispose of the custody and tuition of any of his infant children, being unmarried, and whether born at his death or in ventre sa mere, for such time as the children may remain under twenty-one years of age, or for any less time. Or in case the father is dead and has not exercised his said right of appointment, or has willfully abandoned his wife, then the mother, whether of full age or minor, may do so. Every such appointment shall be good and effectual against any person claiming the custody and tuition of such child or children. Every guardian by deed or will shall have the same powers and rights and be subject to the same liabilities and regulations as other guardians; provided, however, that in the event it is so specifically directed in said deed or will such guardian so appointed shall be permitted to qualify and serve without giving bond, unless the clerk of the Superior Court having jurisdiction of said guardianship shall find as a fact and adjudge that the interest of such minor or incompetent would be best served by requiring such guardian to give bond."

This Statute gives the parents the right, by deed, to dispose of the custody and tuition of the minor child during its minority. In the case of *Truelove v. Parker*, 191 N. C. 430, at 436, the court, in discussing this Statute, among others, said:

"In all these Statutes, and in others, the Legislature has recognized the human as well as the legal relation between parent and

child, the paramount and the subordinate, the present and the inchoate, rights of the father and the mother, and his wisely provided that both the parents shall have adequate opportunity to be heard and, except in rare cases, shall give their consent before the legal relation is severed or the domestic circle is broken."

In the case of *Chambers v. Byers*, 214 N. C. 373, the court held that an instrument executed by the parent of a child and another person desiring to assume the care, custody and control of the child and in effect adopt it did not constitute an adoption within the meaning of the adoption statutes, but did constitute an enforceable contract between the parties. Persons have a right to contract if it is not contrary to law or public policy, but in the case under consideration, it appears that the mother of the illegitimate child in question came from the State of Florida to the County of Buncombe for the express purpose of giving birth to the child and almost immediately thereafter of placing the child out of procuring its adoption. This course of procedure is specifically prohibited by the provisions contained in Section 5067 (1) unless the written consent of the State Board of Charities and Public Welfare is obtained. In addition to this, the mother, in the face of the plain provisions of Section 4445, undertook to dispose of the child when it was under six months of age, without making any attempt whatsoever to comply with the provisions of this section.

It is therefore my opinion that if the purported deed from the mother would ordinarily have the effect of transferring the care, custody and control of the child to such an extent as to eliminate the necessity for the consent of the mother to an adoption proceeding in this particular case the validity of the deed would be questionable, and before an adoption proceeding could be instituted, it would be necessary that the matter be cleared under the provisions of Section 5067 (i) to 5067 (p), inclusive, and that the consent of the mother should be secured to the adoption.

JUVENILE COURTS; COMMITMENT OF CHILDREN TO INSTITUTIONS;
AUTHORITY OF JUVENILE JUDGE TO DESIGNATE OFFICER TO
CARRY CHILD TO INSTITUTION

25 May, 1943.

You state in your letter of May 24 that there is a difference of opinion between the judge of a juvenile court and a superintendent of public welfare as to who has the authority to designate the officer to carry a child to an institution, to which it has been committed by the judge of the juvenile court.

From an inspection of the statutes governing the duties of a county superintendent of public welfare and the duties of a judge of the juvenile court, it is my opinion that the judge of the juvenile court would have the authority to designate the officer who is to convey a child committed by the judge of the juvenile court to a State institution. I am unable to find where the county superintendent of public welfare would have any authority in the matter, unless the authority is given by the judge of the juvenile court.

CRIMINAL LAW; BASTARDY; DUTY OF SUPERINTENDENT OF PUBLIC
WELFARE AS TO INSTITUTION OF PROSECUTION

28 July, 1943.

Receipt is acknowledged of your letter of July 27 in which you inquire as to whether a county superintendent of public welfare is required under the law to institute criminal prosecutions under the provisions of the Bastardy Law to require the father of an illegitimate child to support it.

Section 276(a) of Michie's North Carolina Code of 1939, Annotated, provides that any parent who wilfully neglects or refuses to support and maintain his or her illegitimate child shall be guilty of a misdemeanor and that a child, within the meaning of the statute, is any person less than fourteen years of age and any person whom either parent might be required under the laws of North Carolina to support and maintain, if such child were the legitimate child of such parent.

Section 276(d) provides that proceedings may be brought by the mother or her personal representative or, if the child is likely to become a public charge, the superintendent of public welfare or such person as by law performs the duties of such official in said county where the mother resides or the child is found.

The Supreme Court of North Carolina, in construing Section 276(a), has held that the begetting of an illegitimate child is not of itself a crime. *State v. Tyson*, 208 N. C. 231. In the case of *State v. Cook*, 207 N. C. 261, the court held that the father of an illegitimate child may be convicted of neglecting to support such child only when it is established that such neglect was wilful, that is, without just cause, excuse, or justification. In the case of *State v. Spillman*, 210 N. C. 271, the court held that the State must prove on the trial both the defendant's paternity of the child and his wilful neglect or refusal to support it.

It is my opinion that Section 276(d), in so far as it relates to the duty placed on the county welfare officer, is permissive rather than mandatory. Of course, a county welfare officer should be interested in rendering assistance to prevent a child from becoming a public charge and in performing this duty to place the responsibility for supporting the child where it actually belongs. However, it is my opinion that before a county welfare officer would be justified in instituting a criminal prosecution against the alleged father of an illegitimate child, such welfare officer should be fully satisfied not only that the child is likely to become a public charge but that there is sufficient evidence available with which to convict the alleged father.

LEGAL SETTLEMENTS; CONTINUATION UNTIL NEW SETTLEMENT ACQUIRED

15 September, 1943.

Receipt is acknowledged of your letter of September 14 enclosing letter from Honorable F. J. Koonce, Superintendent of Public Welfare of Jones County, in which he raises a question as to the legal settlement

of a person who is in need of an operation which it seems must be performed at the expense of the county of the legal settlement of such person.

It appears from Mr. Koonce's letter that the person referred to was convicted for a violation of the criminal laws of the State in a county in which such person had established legal settlement. This person was later paroled to Jones County but, before remaining in Jones County a sufficient time to gain legal settlement, this person removed to another county, where she remained about five months, and has recently moved to still another county. You desire to know in which county this person has a legal settlement.

It does not appear from Mr. Koonce's letter whether the person in question is married or single. Of course, if the person in question is a married woman, her legal settlement would be that of her husband, but I am assuming, for the purpose of answering your question, that this person is unmarried.

Under the provisions of Subsection 5 of Section 1342 of Michie's North Carolina Code of 1939, Annotated, every legal settlement continues until it is lost or defeated by acquiring a new one, within or without the State, and upon acquiring a new settlement, all former settlements are defeated and lost.

Applying this principle to the facts as contained in the letter from Mr. Koonce, I am of the opinion that the legal settlement of the person to whom he refers remains in the county in which her legal settlement was established at the time she was convicted and sentenced. It does not appear that she has resided in Jones County for a sufficient length of time to gain a new settlement; neither has she resided in any of the other counties since being paroled for a sufficient time to acquire such new settlement.

STATE BOARD OF CHARITIES AND PUBLIC WELFARE; POWER TO LICENSE
INSTITUTIONS; AGE OF MINOR INMATES

6 October, 1943.

Receipt is acknowledged of your letter in which you raise the question as to the maximum age of minors who would be entitled to protection under the provisions of Sections 5006 and 5067 of Michie's North Carolina Code of 1939, Annotated.

These sections are brought forward in the new Code as 108-3-5 and 110-49. Of course, the new Code does not become law until January 1, 1944.

The sections above referred to, when referring to the licensing of institutions, used the words, "child" and "children." The word "children," when used irrespective of parentage may denote that class of persons under the age of 21 years as distinguished from adults, but its ordinary meaning, with respect to parentage, is sons and daughters of whatever age. *7 words and phrases*, Perm. Ed., Page 7. The word "child" also, which used irrespective of parentage, would denote that class of persons under the age of majority.

The use of the words "child" and "children" in the statutes under consideration has no reference to parentage and, to my mind, the persons included would be all those under the age of 21 years. It is therefore my opinion that the State Board of Charities and Public Welfare would be authorized and empowered to license all institutions covered by the provisions of these sections which care for persons under the age of 21 years of the type mentioned therein.

ADOPTION OF MINORS; RESIDENCE OF MOTHER OF CHILD;
RESIDENCE OF CHILD

22 February, 1944.

Receipt is acknowledged of your letter of February 16 in which you state that an unmarried mother, 17 years of age, is asking assistance in connection with the placement of her child for adoption. It appears that the parents of the mother of the child have been separated since 1928, the father having deserted the mother. The mother of the child resides with her mother. You desire to know whether, in my opinion, the legal residence of the mother of the child is in the county in which she now resides and whether the Superintendent of Public Welfare of the county has authority to accept from the mother the full surrender of her child for the purpose of placement for adoption.

Section 48-5 of the General Statutes of North Carolina authorizes the surrender of a child by its parents to the Superintendent of Public Welfare and when this is done in compliance with the statute it is deemed a sufficient consent for the purposes of the adoption law and no further consent of the parents to a subsequent specific adoption is necessary. The words, "The Superintendent of Public Welfare of the county," as used in this section, mean the county in which the child has legal residence.

From the facts outlined in your letter it is my opinion that the legal residence of the child would be in the county in which it now lives with its mother and its grandmother. I am therefore of the opinion that the Superintendent of Public Welfare of the county in which the child now resides would have the authority to accept from the mother of said child the surrender in writing contemplated in Section 48-5 of the General Statutes of North Carolina.

HOSPITALS FOR THE INSANE; ADMISSION OF PATIENTS; TRANSFER
FROM OTHER STATES

17 April, 1944.

You state that in the past you have had requests from other states for the verification of legal settlement and return of mental patients to the State of North Carolina and that it has been the practice to return a patient to the county of legal settlement to await commitment to one of the North Carolina state hospitals, which means in many instances that the patients must be held in jail pending acceptance of the patients by the state hospitals. You desire to know whether, in my opinion, it would be legal to have such patients transferred directly to the state hospital concerned, after the superintendent

of public welfare has verified the fact that the patient does have legal settlement in the county and the clerk of the court indicates that he is willing to make the commitment on the basis of medical and social history furnished by the other state and the superintendent of the state hospital concerned agrees to have the patient sent directly to such hospital.

I can readily see that the course of procedure outlined by you would be very desirable if it is not prohibited by the statutes governing the admission of patients to the state hospitals for the insane. The statutes governing the admission of patients are contained in Article III of Chapter 122 of the General Statutes of North Carolina.

Section 122-36 provides that any resident of North Carolina who has been legally adjudged to be insane by the clerk of the court or other properly authorized person, in accordance with the provisions of the chapter, shall be entitled to immediate admission to the hospitals mentioned therein. This section, together with the other sections contained in this article, clearly contemplates not only that the adjudication of insanity must be made by the clerk of the superior court or a justice of the peace in the manner therein provided but that the adjudication must be made prior to the commitment. A person is only entitled to be admitted to the state hospitals for the insane upon a commitment based upon an adjudication made in the manner provided in the statutes embraced within Article III of Chapter 122. These statutes contemplate not only an examination by the clerk but also by the county physician of the county or some other licensed and reputable physician who is a resident of the State of North Carolina.

I am therefore unable to see how a state hospital for the insane would be justified in receiving a patient in the manner outlined in your letter. Of course if the patient retains sufficient mind to be capable of signifying his or her wishes, such patient might be committed under the provisions of G. S. 122-62 which provides for self-commitment.

WELFARE LAWS; COUNTY WELFARE BOARDS; MEETINGS; MINUTES

26 April, 1944.

Receipt is acknowledged of your letter of April 25 in which you raise the question as to whether it is necessary for a county welfare board to keep minutes of the board's regular monthly meetings.

Under the provisions of G. S. 108-12, the county welfare board is required to meet at least once a month and under the provisions of G. S. 108-11, the superintendent of public welfare is required to act as secretary to the board. Under the provisions of the Old Age Assistance and Aid to Dependent Children Acts, the county board of welfare is required to determine whether an applicant is eligible for assistance, the amount of the assistance and the date on which it is to begin. In addition to this, there might arise various other matters which would require official action by the county board of welfare. It appears to me that accurate minutes should be kept of any official

action taken by the county board of welfare. If official action is taken by the board and no minutes are kept there could always be an argument as to whether the board took official action or what action was in reality taken in regard to a particular matter.

It is my opinion that a county welfare board should, through its secretary, the county superintendent of public welfare, keep accurate minutes of its meetings whether the same be a regular or special meeting.

DOUBLE OFFICE HOLDING; MEMBER, COUNTY WELFARE BOARD;
JUVENILE COURT JUDGE

17 May, 1944.

I acknowledge receipt of your letter inquiring as to whether or not a Juvenile Court Judge may serve as a member of the County Welfare Board.

I am of the opinion that both the office of Juvenile Court Judge and membership on a County Welfare Board are offices within the meaning of Article XIV, Section 7, of the State Constitution prohibiting double office holding. There is exempted from the constitutional prohibition against double office holding "a commissioner of a public charity."

I am inclined to the opinion that if our Supreme Court was called upon to pass upon the question, it would hold that a member of a County Welfare Board is "a commissioner of a public charity" and exempted from the prohibition relating to double office holding. However, as you well know, I have no way of knowing what decision the Supreme Court would arrive at on this question, so that I am unable to give a definite opinion that a member of a County Welfare Board would not be construed by the Court to be such an officer as would be barred from holding at the same time the office of Juvenile Court Judge, or any other public office.

OPINIONS TO DEPARTMENT OF CONSERVATION AND DEVELOPMENT

CONSERVATION AND DEVELOPMENT; STATE PARKS; PERMIT TO BUILD
DOCK ON LAKE WACCAMAW

10 August, 1942.

You raise certain questions in regard to the construction of a dock, with an open pavilion, on Lake Waccamaw by the Town of Lake Waccamaw under a building permit issued by the Department of Conservation and Development. I shall undertake to answer your questions in the order set out in your letter.

1. Under the terms of the building permit form, who is responsible for initiating the renewal of a building permit to construct, maintain, and operate structures in State-owned lakes, the person or organization to whom the building permit is issued or the Department of Conservation and Development?

Under the provisions of the building permit issued by the Department of Conservation and Development to the Town of Lake Waccamaw, the permit extended over a period of five years from April 7, 1936. It is my opinion that it was the duty of the Town of Lake Waccamaw to apply for a renewal of said permit, if it so desired, and that there was no duty placed on the Department of Conservation and Development to take any steps towards its renewal.

2. Under the terms of the building permit form, if the person or organization to whom a building permit is issued does not request that the building permit be renewed, can the State automatically take over the buildings covered by the building permit five years and 60 days after the building permit is issued or are preliminary steps necessary?

The permit recites that it is granted under the conditions on the reverse side of the sheet constituting the permit and Condition No. 4 reads as follows:

"4. The buildings constructed, maintained or operated under this permit must not be destroyed or removed without the written permission of the Director. They will, however, remain the virtual property of the permittee during the life of this lease and for 60 days following its termination. After this period, unless removed by permittee with the approval of the Director, the buildings will be taken over by the State."

Under the provisions of this Condition, after the expiration of 60 days from April 7, 1941, unless there was a renewal of the permit, the State had a right to take over the improvements unless the Director of the Department of Conservation and Development saw fit to allow the Town of Lake Waccamaw to remove said improvements. It is my thought that no preliminary steps would be necessary, but a notice of such taking would be entirely proper.

3. Do the words "will be taken over by the State" in Condition 4 on the reverse side of the permit mean exactly the same thing as "take full possession of"?

To my mind, the words "will be taken over by the State" express an intention on the part of the State to take full possession of the improvements after the expiration of 60 days following the termination of the permit, if it saw fit to do so.

4. Under the terms of the building permit form, can the State refuse, at the expiration of the building permit form, to take over the structures covered by the building permit form and require the person or organization to whom the building permit was issued to renew the building permit and repair or remove the structures covered by the building permit?

Under the terms of the building permit issued to the Town of Lake Waccamaw, it is my opinion that the Department of Conservation and Development could not require said Town to renew the building permit and repair or remove the structures covered by said permit.

5. In the case of the building permit issued to the Town of Lake Waccamaw on April 7, 1936, can the words "opposite land owned by Town of Lake Waccamaw, which assumes responsibility for its maintenance and management" be interpreted to mean that the Town of Lake Waccamaw is responsible for the maintenance and operation of the dock and pier indefinitely, or only for the period for which the building permit is issued, which, judging from the sentence on the face of the permit reading "it extends over a period of five years from date and is renewable," is five years?

It is my opinion that the building permit extended only for five years from April 7, 1936, unless the Town of Lake Waccamaw applied to the Department of Conservation and Development for its extension.

It appears from your letter that the Town of Lake Waccamaw made these improvements with Federal funds. It is quite possible that in securing the Federal funds the Town of Lake Waccamaw agreed to operate the improvements placed on the Lake for a longer period than five years from April 7, 1936. Of course this is a matter between the Federal agency and the Town.

CONSERVATION AND DEVELOPMENT; STATE PARKS; OBLIGATION OF
DEPARTMENT TO MAINTAIN IMPROVEMENTS TAKES OVER
UNDER BUILDING PERMIT

15 August, 1942.

In your letter of August 14 you raise certain additional questions with reference to the building permit issued for the construction of a dock and an open pavilion on Lake Waccamaw. I will undertake to answer these questions in the order set out in your letter:

1. Would the answers you gave to my questions hold good for any building permit issued to cover the construction, operation and maintenance of any structure in any State Lake under the jurisdiction of this Department if the terms of the building permit were similar to

the terms of the building permit issued to the Town of Lake Waccamaw?

It is my opinion that the answer to the questions set out in my letter of August 10 would apply to any structure built on a State Lake, under the jurisdiction of the Department of Conservation and Development, if the terms of the building permit were the same as the terms of the building permit issued to the Town of Lake Waccamaw for the construction of a dock with an open pavilion on Lake Waccamaw.

2. If the Department of Conservation and Development takes over any structure under Condition 4 of the building permit form, is it under any obligation to repair, maintain or operate such structure? For instance, if the Department of Conservation and Development takes over the dock with pavilion built under the permit issued to the Town of Lake Waccamaw on April 7, 1936, is the Department of Conservation and Development under any obligation to maintain and operate this structure and can it be required to do so?

It is my opinion that the Department of Conservation and Development would not be under any obligation to maintain and operate the dock and pavilion constructed under the permit issued to the Town of Lake Waccamaw on April 7, 1936. However, if the Department of Conservation and Development decides not to continue the operation of the dock and pavilion, I would advise, as a matter of precaution, that appropriate signs be erected showing that it had been abandoned and warning the public not to use same.

GAME LAWS; HUNTING LICENSES NOT REQUIRED BY TWO OR MORE
RESIDENTS OWNING SAME TRACT OF LAND

14 September, 1942.

I wish to acknowledge receipt of your letter of the 10th inst., enclosing a letter from Mr. Sam Alford, Chairman of Grounds Committee of South Lake Lodge.

In this letter Mr. Alford inquires whether or not ten residents of this State who jointly own a tract of land can be required to buy hunting licenses for the purpose of hunting upon the tract of land owned by them.

Section 2141, subsection (gg) of Consolidated Statutes, and being Section 14 of your pamphlet issued July 31, 1941, exempts any person who is a resident of this State and certain of his dependents enumerated therein from having to obtain a hunting license to hunt upon his own premises.

Section 2141(gg)(1) provides that any nonresident owning in his own right and in severalty one hundred acres or more of land in the State of North Carolina may hunt without obtaining a license on his own premises. This section is set out in the last paragraph of Section 12 of your pamphlet.

It will be noted that the condition upon which a nonresident may hunt on his own land without a license is that he must own in his own right and *in severalty* one hundred acres or more of land in the State of North Carolina in order to be exempted from the license provision of the game law.

Section 2141(gg), exempting a resident who owns land from having to obtain a license to hunt upon his own land, does not specify that the land must be owned by him in his own right and *in severalty*. I, therefore, interpret this section as meaning that the land would not have to be owned by one person, but could be owned by two or more persons, and so long as the property is owned outright by two or more persons, each resident owner of the property would be exempt from the payment of the license to hunt upon such premises.

I assume that South Lake Lodge is not incorporated, and the members thereof are residents of the State of North Carolina, and the real property is owned outright in fee simple by the members of the Lodge. In this event, I am of the opinion that the members of this Lodge, in whom the title to the land vests, are exempt from obtaining hunting licenses to hunt upon the land owned by them.

PROPOSED DRAINAGE DISTRICT IN BEAR SWAMP

12 April, 1943.

I have your letter of April 7, referring to the proposed drainage district in Bear Swamp in Chowan and Perquimans counties. I have today also conferred with you about the matters referred to in your letter, as to the responsibility of the Department of Conservation and Development with reference to the proposal.

The drainage law provides, in C. S. 5317, for the approval by the Department of Conservation and Development of the drainage engineer selected to do the drainage work, and, in C. S. 5334, provision is made for the approval of the fees allowed the drainage engineer by the Clerk of the Superior Court. This is the only responsibility which the Department of Conservation and Development, under the statute, appears to have with reference to the creation of the drainage district under the 1909 drainage law, as amended. The sections referred to would not, in my opinion, give the Director of the Department of Conservation and Development any right or responsibility to pass upon the feasibility or desirability of the project, either from the drainage standpoint or otherwise.

LOGS AND LOGGING; CONVEYANCES OF TIMBER; TIME WITHIN WHICH TIMBER MAY BE CUT

24 June, 1943.

In your letter of June 23, 1943, you inquire if a conveyance or grant of timber with right to remove same would be valid if the time for removing should be as great as 60, 70, 80, or 100 years.

Growing timber is a part of the realty. Therefore, deeds thereto are governed by the law applicable to realty. *Timber Co. v. Wilson*, 151 N. C. 154; *Timber Co. v. Wells*, 171 N. C. 262. The general rules applicable to timber grants are stated by Clark, C. J. in *Kelly v. Lumber Co.*, 157 N. C. 175, as follows:

"Whether the right to cut timber is a grant or a reservation, it expires at the time specified. When no time is specified, the grantee of such right takes upon the implied agreement to cut and remove within a reasonable time; whereas, when the grantor of

the fee reserves or accepts the difference, and there is no limitation to indicate when the reservation shall expire, then the grantee of the fee must give notice for a reasonable time that the grantor must cut or remove the timber included in his reservation."

It has also been held in this State that timber deeds granting a specified time within which to cut and remove timber convey an estate of absolute ownership defeasible as to all timber not cut and removed within that time. *Williams v. Lumber Co.*, 174 N. C. 229.

Our court also held, in *Gilbert v. Shingle Co.*, 167 N. C. 286, that an instrument granting the right to cut and remove timber for 20 years was valid. Since the rules governing the conveyance of real property applies to the conveyance of standing timber and since our court has held that a grant of timber with the right to cut and remove for 20 years is valid, it would seem that a lease for a greater number of years would be valid. I have found no case holding that a grant of timber rights with the right to remove the timber for a period of 80 or 100 years would be valid. However, under the general rules applicable to real property and the decisions heretofore cited, it is entirely possible, in fact probable, that our court would hold such a conveyance valid.

GAME LAWS; JURISDICTION; VIOLATION OF SECTION 2,
CHAPTER 231, P. L. 1941

7 January, 1944.

I acknowledge receipt of your letter in which you state that one Norman Larkee, a resident of Carteret County, was arrested for killing a doe deer, was tried and convicted in the court of a Justice of the Peace of the County. You state that the defendant has refused to pay the fine and cost, contending that a Justice of the Peace does not have jurisdiction.

It appears that the defendant is correct in his contention. The jurisdiction of a Justice of the Peace is fixed by Section 7-129, G. S. (formerly Section 1475, C. S.), which provides that Justices of the Peace have exclusive original jurisdiction of all criminal matters arising within their counties where the punishment prescribed by law does not exceed a fine of \$50.00 or imprisonment for thirty days.

Section 2 of Chapter 231 of the Public Laws of 1941 provides, among other things:

"Provided further, that any person taking or having in possession doe (female) deer in violation of this Act shall be fined not less than fifty dollars (\$50.00) or imprisonment not less than thirty days, or both such fine and imprisonment in the discretion of the court."

It thus appears that a Justice of the Peace does not have jurisdiction in the instant case.

You inquire also as to what procedure should be followed in the event that I am of the opinion that a Justice of the Peace does not have jurisdiction. It seems to me that the better course is to have a new warrant issued, charging the defendant with the violation of

Section 2 of said Chapter 231, Public Laws of 1941, and upon a hearing of the case, if probable cause is found, the defendant should be bound over to the court in the County having jurisdiction.

OIL AND MINERAL LEASE; ANGOLA AND HOLLY SHELTER POCOSINS

23 March, 1944.

In conference with you on yesterday we discussed the question contained in the letter to you from Honorable F. E. Wallace as to oil and mineral lease on lands owned and held by the State Department of Conservation and Development, referred to as the Angola and Holly Shelter swamps or pocosins. In this conference, I stated to you that General Statutes, Section 113-44, provides that the Department of Conservation and Development shall have full power and authority to sell, exchange or lease lands under its jurisdiction when, in its judgment, it is advantageous to the State to do so in the highest orderly development and management of State forests and State parks. Under this section, your Department would have a right to lease the oil and mineral rights as to any land as to which you had absolute title under the conditions and provisions of the statute.

By Chapter 232 of the Public Laws of 1939, the State Board of Education was authorized to transfer to your Department that certain swamp land owned by the State Board of Education in Pender and Onslow counties, known as the Holly Shelter pocosin, for the purpose of development, supervision and administration as a game refuge or game preserve and as a public hunting ground, in accordance with the provisions of the laws of this State. This Act provides, in Section 2, as follows:

"That in the event the above described swamp lands, known as Holly Shelter Pocosin, should hereafter cease to be used as a game refuge, or game preserve, and public hunting ground, the Department of Conservation and Development shall lose all of the rights conferred by this Act, and the said swamp lands shall revert to the State Board of Education."

After the enactment of this Act and under its authority and in keeping with the terms thereof, the State Board of Education executed a conveyance to your Department, under which it now exercises authority over this property. On account of the character of the conveyance authorized by the statute and the reservations contained in the statute above quoted and in the deed, I would recommend that any oil lease of this property should not be made unless it is approved by the State Board of Education and it is also my opinion that it should join in any lease which may be executed.

OPINIONS TO COMMISSIONER OF BANKS

BANKS; CHARGE FOR INACTIVE ACCOUNTS

25 September, 1942.

I have your letter of September 24, with copy of a letter from Mr. J. C. Gardner, Vice President of the Citizens Bank and Trust Company of Henderson, North Carolina. In Mr. Gardner's letter, he suggests adding to the signature card used in his bank a provision as follows:

"Where an account is inactive for a period of one year (that is, no deposit made or checks drawn), a maintenance fee of \$2.00 per annum is to be charged for each year thereafter that the account remains inactive."

He asks your opinion as to his authority to make such a charge, as to which you ask my opinion.

The Banking Commission would have a right to regulate the charges made by the bank to its customers. If such a charge was approved by you and the Banking Commission, I know of no law which would prevent it being made. As a member of the Banking Commission, I have some doubt as to the reasonableness of such a charge, particularly as to very small inactive accounts. It is a matter which might be fully considered by you and the Banking Commission.

BANKS; CHANGE OF NAME; CONCURRENCE OF TWO-THIRDS IN INTEREST OF STOCKHOLDERS REQUIRED UNTIL JANUARY 1, 1944, WHEN A MAJORITY WILL BE SUFFICIENT

8 March, 1943.

In your letter of March 5, 1943, you inquire whether a majority in interest or two-thirds in interest of the stockholders must concur in an amendment to the charter of a bank to change the name of said bank.

Section 1131 of the Consolidated Statutes of 1919 provides that corporations generally may change their names by a resolution passed by the board of directors, which is concurred in by two-thirds in interest of each class of stockholders with voting powers. The last sentence of that section provides that corporations other than those authorized to be created under the chapter "Corporations" may likewise change their names.

I am of the opinion that this last sentence is authority for authorizing the change of the name of a banking corporation, as a banking corporation is a corporation which cannot be formed under the chapter "Corporations." In 1925, by Chapter 118 of the Public Laws of 1925, the phrase, "two-thirds in interest of each class of the stockholders," in Section 1131 was changed to "the owners of a majority of the shares of stock." This law, however, was expressly made inapplicable to banks and building and loan associations.

Therefore, I am of the opinion that a resolution to change the name of a bank must still be concurred in by two-thirds in interest of each class of the stockholders with voting powers. However, in the General Statutes of North Carolina, which are to become effective January 1, 1944, banks are authorized to change their names by a resolution concurred in by a majority of the stockholders with voting power. Thus, it appears that at the present time and until January 1, 1944, the name of a bank can be changed only when such change is concurred in by two-thirds in interest of the stockholders with voting power, and, after that date, the name can be changed with the concurrence of the owners of a majority of the shares of stock.

STATESVILLE INDUSTRIAL BANK; RIGHT TO BE DESIGNATED WAR
LOAN DEPOSITARY; LIMITATION OF DEPOSITS, ETC.

10 April, 1943.

I have your letter of April 9, enclosing a letter from Mr. W. W. Dillard, Assistant Cashier of the Federal Reserve Bank of Richmond, in which Mr. Dillard writes as follows:

"We have an application from the Statesville Industrial Bank, Statesville, N. C., to be designated a War Loan depositary for Government funds for an amount not exceeding \$50,000.

"We shall appreciate it if you will advise us whether or not industrial banks have authority to hypothecate securities, whether there is any limit set on deposits which they may hold from any one source and whether the Statesville Industrial Bank is authorized to accept deposits of this kind which are subject to call at any time without advanced notice under the laws which it operates."

I find no limitation in our law as to the amount of deposits which may be received by an industrial bank. I do not find in the law any express provision authorizing industrial banks, or commercial banks for that matter, to hypothecate securities for deposits which may be made with them. There is no express provision which would prohibit this being done, either in the case of an industrial bank or a commercial bank.

Under Michie's Code 225(f), industrial banks are given all such additional powers as may be necessary or incidental for carrying out their corporate purposes, in addition to the specific powers which are conferred, including the right to solicit, receive and accept money or its equivalent on deposit, both in savings accounts and upon certificates of deposit.

I am of the opinion that, under the authority implied from these provisions, the industrial bank would have a right to hypothecate securities for deposits made by the Federal Government with them as a War Loan depositary.

Such deposits as made by the Government in the industrial bank could be made subject to call at any time without advance notice, as there is no provision in our statute which makes it mandatory that the industrial bank shall require notice of withdrawal of such deposits. In case of being subject to withdrawal without notice, the deposits would not be permitted to draw interest.

BANKS; LEGAL RESERVE WAR LOAN DEPOSITS

16 April, 1943.

I have your letter of April 15, enclosing a letter from Mr. C. T. Leinbach, Vice President of the Wachovia Bank and Trust Company, in which he calls attention to the fact that the President has signed a bill eliminating War Loan Deposit from FDIC, and also reserve requirements of the Federal Reserve Bank; also advising that under this law the trust receipts issued by the bank's regular correspondents will be accepted, which will eliminate the necessity of the bank shipping the securities to Richmond. He inquires if any law or regulation has been adopted by the State Banking Commission, or by you or by the Governor, to eliminate State reserve requirements for State banks not members of the Federal Reserve System.

The reserve requirements under our law are statutory, C. S. 220(f). This statute reads as follows:

"Every bank shall at all times have on hand or on deposit with approved reserve depositories, instantly available funds in an amount equal to at least fifteen per cent of the aggregate amount of its demand deposits, and five per cent of the aggregate amount of its time deposits. But no reserve shall be required on deposits secured by a deposit of United States bonds or the bonds of the State of North Carolina. Any bank that is now or may hereafter become a member of the Federal Reserve Bank shall maintain the same reserve with respect to deposits as shall be required of other members of such Federal Reserve Bank."

There is nothing in our banking law or in the North Carolina Emergency War Powers Act which would give any authority to the Governor, the State Banking Commission, or to you to change the requirements of the statute as to reserves. In the absence of such an act as was passed by Congress, you would have no authority to suspend the operation of the statute.

BANKS; LIMITATIONS ON LOANS; C. S. 220(d)

11 May, 1943.

I have your letter of May 10, enclosing a letter from Mr. A. K. Davis, Vice President of the Wachovia Bank and Trust Company, referring to the credit extended to the Associated Transport, Inc., and the Conger Realty Company. I understand from this letter that, if the proposed loan to the Conger Realty Company would be considered as an indirect liability of the Associated Transport, Inc., the loan would exceed that authorized by our law, Michie's Code 220(d).

The letter from Mr. Davis states that the Conger Realty Company, a wholly-owned subsidiary of the Associated Transport, Inc., proposes to secure the loan by a mortgage on terminal properties owned by that company, which properties are leased from the Conger Realty Company to the Associated Transport, Inc., the lease being also assigned as additional collateral, and the amount of the lease payments being designed to pay out the loan in full on the basis of twenty equal quarterly payments.

On the facts as stated, I am of the opinion that the loan, if made to the Conger Realty Company, would be an indirect liability of the Associated Transport, Inc., as the method of payment provided is from the obligation of the Associated Transport, Inc., in the payments of rents. The fact that the Conger Realty Company is a wholly-owned subsidiary of the Associated Transport, Inc., together with the fact that the terminal properties will be leased to the parent company, would, in my opinion, make it necessary to consider this loan as an indirect liability of the Associated Transport, Inc.

BANKS AND BANKING; LIMITATIONS UPON LOANS; LOANS SECURED OR COVERED BY GUARANTEES OF FEDERAL AGENCIES

2 June, 1943.

You have submitted to this office certain questions relating to the authority of a bank to make loans in excess of the statutory limitation upon loans provided in N. C. Code Ann. (Michie, 1939), Section 220(d), as amended, when such loans are secured by guarantees or commitments from agencies of the Federal Government. Specifically, you inquire (1) whether a bank can make loans in excess of the loan limitation if the loans are secured by collateral consisting of notes and mortgages guaranteed by the Federal Housing Administration; and (2) whether banks can make loans in excess of the loan limitation if the collateral, consisting of notes and mortgages guaranteed by the Federal Housing Administration, is also covered by a commitment from the Reconstruction Finance Corporation to purchase the collateral.

If these loans are to be permitted without regard to the loan limitations, it must be concluded that they are properly within the scope of the exceptions to such limitations. The exception with which we are concerned is that found in the last proviso of Section 1 of House Bill No. 310, enacted at the 1943 Session of the General Assembly, which reads as follows:

"Provided, further, that the limitations of this section shall not apply to loans or obligations to the extent that they are secured or covered by guarantees or by commitments or agreements to take over or purchase the same, made by any Federal Reserve Bank or by the United States or any department, board, bureau, commission or establishment of the United States, including any corporation wholly owned directly or indirectly by the United States."

As I construe this exception, the limitations upon loans are inapplicable to a loan if it is secured or covered (1) by guarantees made by a Federal Reserve Bank, the United States, or by any of the departments, boards, bureaus, commissions and corporations mentioned, or (2) by commitments or agreements to take over or purchase made by the United States or the agencies mentioned.

In my opinion, a loan is secured by a guarantee from the United States or the agencies mentioned if the collateral is guaranteed and the guarantee inures to the benefit of the bank, although the guarantee was not made directly to the bank. Therefore, I conclude that a

loan secured by collateral guaranteed by the Federal Housing Administration falls within the exception to the statutory limitation upon loans. Such a loan falls within the exception by reason of the fact that the collateral is guaranteed by the Federal Housing Administration, alone. A commitment from the Reconstruction Finance Corporation gives additional security to the loan but the loan would be permissible even without such guarantee by the Reconstruction Finance Corporation.

BRANCH BANK EXAMINATION FEES

8 July, 1943.

I have your letter of July 7, in which you write me in part as follows:

"It has been customary to calculate examination fees on the total resources of the home office and each branch separately. No credit has been allowed for duplication in resources on account of balances due to branches by the home office or balances due by the branches to the home office.

"Do you think that these amounts should be deducted in calculating these examination fees as of December 31, 1942?"

The banking law, Michie's Code 223(f), provides that, for the purpose of paying the expenses of the banking department, each bank and each branch of any bank which under the laws of the State of North Carolina is subject to supervision and examination by the Commissioner of Banks and is authorized to do business or is in the process of voluntary liquidation, shall, within ten days after the assessment has been made, pay into the office of the Commissioner of Banks, "*according to its total resources as shown by its report of condition made to the Commissioner of Banks . . .*," fees in accordance with the schedule set up, based upon the assets of the bank.

I am of the opinion that the duplication in resources on account of balances due to branches by the home office, or balances due by the branches to the home office, should be deducted in calculating the basis of the examination fees.

I understand from you that the home office bank, in filing its statement of condition which is published as required by law, shows as a deduction from its resources the sums on deposit with it by its branches. The deposits with the home office bank by the branch bank amount to no more, in my opinion, than an inter-banking system of accounting and such deposits do not result in an actual increase of the total resources of the home bank. The same may be said as to balances due by the branches to the home bank.

You further advise that all examination fees for 1943 have been paid, with the exception of fees due by three banks, and inquire if deductions should be made of the balances due to branches by the home office, or balances due by branches to the home office, in calculating the amount of fees to be collected. In my opinion, these deductions should be made.

You also inquire as to whether or not refunds can be legally made on fees heretofore paid in, based upon such duplication of liability.

The payment of such refunds would depend upon whether or not "the fees" collected under the terms of the statute would be considered as taxes within the meaning of C. S. 7979(a), authorizing the refund of taxes illegally collected and paid into the State Treasury.

I am of the opinion that, although the amounts paid by the banks are called fees, the payments are in fact exactions made by the law for the support of the State Banking Department, a State Governmental agency, and as such would be, in substance, taxes. Upon this principle, our Court held in the case of Insurance Company v. Unemployment Compensation Commission, 217 N. C. 499, that "contributions" paid by employers under the terms of the Unemployment Compensation Act, were taxes and should be treated as such.

Under the refund statute above mentioned, the refund can be made only upon request of the head of the department through which the taxes were collected, or his successor, in the performance of the functions of that department, and can be made provided demand is made within two years of the time of payment. Under this section, the Banking Department will not be compelled to make a refund but is authorized and empowered to do so when it finds that taxes have been paid through clerical error or misinterpretation of the law, or otherwise.

CORPORATIONS; AMENDMENT TO CHARTER BY SPECIAL ACT; STATE
EMPLOYEES CREDIT UNION; CHAPTER 781, S. L. 1943

14 December, 1943.

I have your letter in which you invite my opinion as to the constitutionality of Chapter 781 of the Session Laws of 1943, relating to the withdrawal of deposits from the State Employees Credit Union. This Act provides that the State Employees Credit Union is authorized to honor any drafts drawn on it by any depositor thereof to the extent of such depositors account in said Union, and provides that the Credit Union may charge a fee for each draft honored not exceeding ten cents per draft.

This Credit Union was organized under the authority of Subchapter III of the Consolidated Statutes, the powers of which are defined in Article 9 of this Subchapter, which powers do not include the authority given the State Employee Credit Union by Chapter 781.

Our Constitution, in Article 8, Section 1, provides that no corporation shall be created nor shall its charter be extended, altered or amended by special Act, except corporations for charitable, educational, penal or reformatory purposes that are to be and remain under the patronage and control of the State, but the General Assembly shall provide by general laws for the chartering and organization of all corporations and for amending, extending and the forfeiture of all charters, except those above permitted by special Act.

The Act of the 1943 General Assembly is, in effect, an amendment to the charter of the State Employees Credit Union, extending its authority and powers, which would appear to be prohibited by the section of the Constitution above referred to.

No official except a court of competent jurisdiction has authority to declare an Act of the Legislature void for unconstitutionality. *Bickett v. Tax Commission*, 177 N. C. 433. Therefore, this letter should not be considered anything more than an expression of my opinion as to what the court would hold if a suit was instituted to present this question. The Act only authorizes the directors of the association to exercise their power and if they see fit to do so, it would be proper for them, in view of the question as to the constitutionality of the Act, to refrain from any activities in this field under the authority of this statute.

NATIONAL BANKS; TRUST DEPOSITS; LIABILITY FOR LICENSE TAX UNDER
G. S. 58-114, FORMERLY C. S. 6377

31 January, 1944.

I have your letter of January 29, in which you enclose a letter from Mr. L. J. Blakey, President of the National Bank of Burlington, dated November 1, 1943, and a letter from Mr. C. B. Upham, Deputy Comptroller of the Currency, dated November 12, 1943, both relating to the payment of the fee prescribed by G. S. 58-114 (formerly C. S. 6377), for national banks engaged in fiduciary business without giving bond as otherwise required of corporate and individual fiduciaries in this State. I have given this the very careful consideration that its importance requires.

It is my understanding that all of the payments made by The National Bank of Burlington were voluntary payments; that is to say, that the payments were made without being made under protest, and that no written demand for the refund of the payments was made within the time prescribed by law. It is my understanding that having made these payments, The National Bank of Burlington has been permitted to engage in fiduciary business without giving bond in the various trusts for which it has acted during the period for which the license was granted.

I have before me an opinion on this subject rendered by a former Attorney General, Honorable Dennis G. Brummitt, on December 15, 1931, in which the validity of the license fee is sustained as to national banks who voluntarily make the payment and thereby secure the license to engage in fiduciary business without giving a bond as permitted by the statute. This opinion has been standing and unchallenged during all these years, until recently, and I would not feel disposed to attempt to reverse it except upon being fully satisfied that it cannot be sustained. I have not reached such a conclusion.

In the case of *Missouri Ex Rel. Burns National Bank v. Duncan*, 265 U. S. 17, it was held that a national bank, with the proper authorization of the board of governors of the Federal Reserve System, might engage in a trust business as a matter of right if competing state banks and trust companies are permitted to engage in such business, which right is conferred by an Act of Congress, which privilege might not be withheld by the state. This case is strongly relied upon by those who oppose the payment of the license tax under the North

Carolina statute. This, however, in my opinion, may be distinguishable from the fee paid under the North Carolina statute for the reasons which I refer to later. It is to be remembered that the tax has been voluntarily paid by the national banks to gain the privilege of acting as fiduciaries, without having to post bonds, in the same manner and to the same extent that the same privilege is extended to state banks upon payment of the \$200.00 fee.

The authority for national banks to act as trustees, to engage in trust businesses, is found in 12 U.S.C.A., Section 248(k). This statute authorizes national banks to engage in a trust business "when not in contravention of state or local law," and further provides:

"Whenever the laws of such statutes authorize or permit the exercise of any or all of the foregoing powers by state banks, trust companies, or other corporations which compete with national banks, the granting to and the exercise of such powers by national banks shall not be deemed to be in contravention of state or local law within the meaning of this chapter."

The intent of the Federal act seems to be to permit national banks to compete with state banks in trust businesses upon terms of equality and not to give national banks engaged in the trust business any advantage over state banks engaged in such business. As stated in *Berylwood Investment Co. v. Graham*, 43 Cal. App. (2d) 659, 111 Pac. (2d) 467, the Federal act gives national banks "privileges and powers of the state bank, which, however, presupposes their assumption of like obligations."

Title 12 U.S.C.A., Section 248(k), provides, in part, as follows:

"National banks in such cases shall not be required to execute the bond usually required of individuals if state corporations under similar circumstances are exempt from this requirement."

Conversely, it was held in *Stevens v. First National Bank & Trust Co.*, 173 Ga. 332, Cert. Den. 284 U. S. 684, that a national bank acting in a fiduciary capacity must execute a bond, under the laws of the State of Georgia, when such bond is required to be given by an individual acting in a fiduciary capacity.

G. S. 58-113—58-116 (formerly C. S. 6376-6379) do not require that a bank be licensed as provided therein before it can act as a fiduciary. Thus, it would be possible for a bank not licensed under these sections to act as a fiduciary by giving the same bonds that would be required of individuals. These statutes are thus enabling statutes which are not mandatory and which have the effect of extending a privilege upon compliance with certain conditions. Since it was the intent of Congress to put state and national banks on a parity under the law, and not to give national banks any advantages over state banks, national banks have the option either to pay the tax and enjoy the same privileges—i.e., the privilege of not giving bond—as the competing state banks, or to act as a fiduciary upon the same terms as an individual might act—i.e., by giving bond. Viewed in this light, the licensing provisions are not burdens enforced

upon national banks, but privileges available to national banks upon exactly the same terms as they are available to state banks; and, if national banks desire to enjoy these privileges, they must comply with the same state requirements as are imposed upon state banks.

This view seems to be supported by the Stevens case, *supra*, and by various other decisions holding that national banks acting as fiduciaries must comply with state laws applicable to state banks acting as fiduciaries. For example, in *Ex Parte Worcester County National Bank*, 279 U. S. 347, it was held that where it is provided by state statute that no one may act as executor except by appointment of a probate court, the appointment of a national bank as executor must be made by the probate court in conformity with state statutes. And in *Jenckes v. Deiterick*, 27 Fed. Supp. 408, a Massachusetts statute authorizing a probate court to remove a trustee was held applicable to national banks. Further, in *First National Bank of Boston v. Commissioner of Taxation*, 181 N. E. 205, it was held that a tax assessed to a trustee on income received by the cestui qui trust from security kept by the trustee was applicable to a national bank acting as trustee. The court said:

"The appellant as a national banking association was subject to the laws of this commonwealth . . . except as they may conflict with the paramount law of the United States."

The view outlined above does not discriminate or burden national banks but places them upon exactly the same footing as state banks. The fee of \$200.00, while called a license fee, may be looked upon as a service fee to defray the office expense of the Commissioner of Banks in licensing the banks. The fact that the Commissioner may not make a detailed audit of national banks would not preclude this view since it is submitted that the court would not attempt to trace in detail the manner in which the money is spent. Any "supervision," even if it is superficial, requires some office expense and keeping of records and correspondence.

I am, therefore, of the opinion that the claim for the refund of the license fees which have been voluntarily paid by The National Bank of Burlington should be denied, and this bank, in my opinion, could not recover the fees heretofore paid as these voluntary payments were properly accepted under the terms of the statute.

BANKS AND BANKING; OWNERSHIP OF OTHER BANK STOCK, ETC.

9 February, 1944.

I received your letter of February 5, enclosing a letter from Messrs. Baker & Carter, Attorneys-at-Law of Gainesville, Florida, which I am returning herewith.

General Statutes 54-47 prohibits any bank from making any investment in the capital stock of any other state or national bank, with the exception of banks organized under the Act of Congress known as the Edge Act, or the capital stock of central reserve banks whose capital stock exceeds one million dollars, and subject to other exceptions noted in this statute.

The letter from Messrs. Baker & Carter inquires as to the rights of common stock holders with reference to the purchase of other common stock when outstanding preferred stock is converted into common stock.

We have no statute in North Carolina which deals with this specific question, nor has there been any case decided by our Supreme Court involving the proposition included in their question. Cases from other states would, therefore, have to be consulted for persuasive authority on this subject.

BANKS; LIMITATION ON LOANS; LETTER OF CREDIT

15 February, 1944.

I have your letter of February 14 enclosing a letter from Mr. E. C. Guy, President, Avery County Bank at Newland, N. C., under date of February 11, in which he requests you to advise him whether or not his bank would be restricted in issuing a letter of credit to 20 per cent of his common capital and surplus as he would in the case of a loan. He advises that what he means by a letter of credit, is a letter agreeing to honor a customer's draft within a fixed time accompanied by a railroad bill of lading covering a shipment of merchandise presumably for the approximate value of the merchandise.

Our law dealing with the limitation on loans by a State bank is found in G. S. 53-48, which provides that a direct and indirect liability for any person, firm or corporation, other than a municipal corporation, for money borrowed (including in the liabilities of a firm the liabilities of the several members thereof), shall at no time exceed 20 per cent of \$250,000.00 or fraction or part thereof of the unimpaired capital and permanent surplus of the bank, and not more than 10 per cent of the excess of \$250,000.00 of the unimpaired capital and permanent surplus of the bank, which contains this proviso:

"Provided, however, that the discount of bills of exchange, drawn in good faith against actual existing values, the discount of solvent trade acceptances, or other solvent commercial or business paper actually owned by the person, firm or corporation negotiating the same . . . shall not be considered as money borrowed within the meaning of this section. . . ."

As I understand the transaction referred to by Mr. Guy, he contemplates obligating his bank to honor a draft drawn against a bill of lading for the actual existing value of merchandise shipped under this bill of lading. This transaction would apparently come within the exclusion of our statute and the limitation of loans would not be applicable.

Of course, the bank could not commit itself to make loans in excess of the limitation provided by the statute, but I would not consider the writing of a letter of credit of the character mentioned as being the incurring of liability limited by the statute.

INDUSTRIAL BANKS; TRUST BUSINESS

18 March, 1944.

I have your letter of March 16, enclosing a copy of a letter from Mr. W. H. Smith, President of the Morris Plan Bank of Salisbury, in which he writes as follows:

"We have contemplated the safekeeping of war bonds for individuals at the fixed rate per bond. We understand that some banks do this, charging individuals about fifty cents a year per bond for safekeeping.

"The question arises in my mind as to whether or not we have the right to go into this since we do not have trust powers. An expression of your opinion as to whether or not the above would constitute trust business will be appreciated."

As stated by Mr. Smith, under the law of the State our industrial banks do not have a right to engage in a trust business. While the transaction referred to would be a very minor form of trust business, at the same time, in my opinion, it would be of that nature. If the industrial banks engaged in this type of trust business, while unimportant in character, it would be impossible to draw the line in the event the trust business were extended. I, therefore, think that Mr. Smith should be advised that industrial banks should not be authorized to engage in this character of trust business.

FIDELITY BANK, DURHAM; PERIOD OF CORPORATE EXISTENCE

25 April, 1944.

I have your letter of April 20, in which you enclose me a copy of a letter dated April 19 from Mr. Jones Fuller, President of The Fidelity Bank of Durham.

Mr. Fuller advises that The Fidelity Bank was incorporated by an Act of the General Assembly of 1887, being Chapter 70 of the Private Laws of 1887, which provides for "perpetual succession," and Mr. Fuller asks your opinion as to whether or not The Fidelity Bank would have to file a certificate of amendment prior to March 3, 1947, extending its corporate existence, by reason of the provisions of G. S. 53-2(6) and 55-26(1), the provisions of 53-2(6) being to the effect that the Charter should show the period, if any, limited for the duration of the company; and 55-26(1) providing that every corporation should have the power "to have succession, by its corporate name, for the period limited in its charter and when the charter contains no time limit for a period of sixty years."

By an examination of Chapter 70 of the Private Laws of 1887, incorporating The Fidelity Bank, I find that the language used, after providing for the name of the corporation, is as follows: "and by that name may have perpetual succession." I do not find in the Charter any specific limitation as to the existence of the corporation. At the time this Act was adopted the general law of the State providing for the creation of corporations was found in Chapter 16 of the Code of 1883. Section 687 provided as follows:

"No body corporate, hereafter to be established, shall exist for a longer time than sixty years, unless otherwise provided in the

act creating the same; but in the case of a dissolution of a corporation by any judgment or decree the debts due to, or from it, shall not be extinguished."

Whether or not this or the provisions of our present law, G. S. 55-26(1), would be controlling in this matter, we would have to determine what is mean by the phrase "and by that name may have perpetual succession." I find no North Carolina case which has passed upon this expression.

In American Jurisprudence, Volume 13, title Corporation, in paragraph 84, the following appears:

"Meaning of Phrase 'Perpetual Succession.'—As a general rule, the words 'perpetual succession,' as used in charters, often in connection with a further provision limiting the period of corporate existence to a certain number of years, mean nothing more than that the corporation shall have continuous and uninterrupted succession so long as it shall continue to exist as a corporation, and are not intended to define its duration. However, in the case of a corporation the purpose and nature of which denote perpetuity, as, for instance, a life insurance company, the words will not be construed, according to the general rule, as meaning a continuance of succession merely during the period for which the corporation may lawfully exist, so as to bring such a company within the operation of a general statute limiting corporate existence to a certain period of years, in the absence of some special provision to the contrary. The same seems to be true as to charitable or educational institutions."

All of the cases cited in the note are decisions of the courts of Missouri.

In view of the uncertainty as to what this language would be held to mean by the courts of this State and the construction which would be put upon the statute in force at the time the Charter was granted in 1887 or the present law, I believe it would be the part of wisdom for the bank to amend its Charter, as allowed by law, so as to definitely extend its corporate existence before the expiration of sixty years after the date of incorporation. This will remove any possible question and, I assume, could be done with a small amount of expense and trouble.

BANKS; AUTHORITY TO ACT AS SURETY

10 May, 1944.

I have your letter of May 9, enclosing a letter from Mr. J. G. Thornton, President of the Wilmington Savings & Trust Company, in which Mr. Thornton writes you as follows:

"We have on various occasions been approached by customers relative to signing their bonds in lieu of a Surety Company Bond, and in all cases we have declined; first, for the reason that I do not think this is a proper banking function and, second, because I have up until this time thought that the assuming of such a contingent liability was contrary to Law. A certain instance has just come up along these lines, and I have been unable to find any thing in the Law which would prohibit the signing of such a bond so long as the liability is shown up in the statement. Just as a matter of information, I would appreciate your writing me your opinion relative to this."

Banks organized under the laws of the State of North Carolina have the powers and duties prescribed in Article VI of Chapter 53 of the General Statutes of North Carolina. This law was construed in the case of Quarries Co. v. Bank, 190 N. C. 277. On page 283, our Court says:

"In the absence of an express grant of authority, a banking corporation, as a rule, has not the power to become the guarantor or surety of the obligation of another person, or to lend its credit to any person. No such power being conferred by the National Bank Act, this rule applies to National Banks.' Tiffany on Banks and Banking, p. 284. 'Banking associations from the very nature of their business are prohibited from lending credit.' Magee on Banks and Banking, p. 466: 'It is not within the ordinary functions of a bank to lend its credit, and so it cannot become an accommodation endorser. Neither is a bank authorized to become a guarantor, except where it is necessary to protect its rights where the guaranty relates to commercial paper and is an incident to the purchase and sale thereof, or when the guaranty is especially authorized by law.' 7 C. J., 595. 'A banking corporation cannot lend its credit to another by becoming surety, endorser or guarantor for him.' 3 R. C. L., 425. Each of these statements as to the law is sustained by numerous citations of authority."

The reason against the bank acting as surety on the bank in lieu of a surety company is stronger than that set forth in the above case as to acting as surety on the performance contract. In both cases, I am of the opinion that a bank created under the laws of this State would have no right to engage in a surety business or sign the bonds in lieu of a surety company, except such as are necessary and in connection with the conduct of its own affairs as a bank or trust company.

OPINIONS TO DIVISION OF PURCHASE AND CONTRACT

DIVISION OF PURCHASE AND CONTRACT; PURCHASE OF TYPEWRITERS FROM WIFE OF STATE EMPLOYEE

28 August, 1942.

I acknowledge receipt of your letter of August 26, in which you inquire whether the Division of Purchase and Contract can purchase a typewriter from the wife of one of the employees of the North Carolina Industrial Commission.

If you find as a matter of fact that the typewriter in question is actually owned by the wife of the employee and is her sole and separate property, I am of the opinion that there is no legal bar to said typewriter being purchased by the Division of Purchase and Contract for the North Carolina Industrial Commission.

COMMISSIONERS OF PUBLIC TRUSTS; PURCHASE OF EQUIPMENT MANUFACTURED BY BOARD MEMBER THROUGH ANOTHER CONCERN IN REGULAR COURSE OF TRADE

9 September, 1942.

I beg to acknowledge receipt of your letter relative to your Department purchasing from the Dillon Supply Company of Raleigh certain tools for the Department of Conservation and Development, since Mr. Council is a member of the Department of Conservation and Development.

It is my understanding that the Dillon Supply Company is an independent dealer in which Mr. Council does not own any stock or hold any office, or in which he has any other financial interest; that this company buys at wholesale certain products of the Council Tool Company, and these products are sold by the Council Tool Company to the Dillon Supply Company on a straight trade and not on assignment, and without retaining any title or control over the products sold to the Supply Company.

Assuming this to be a true statement of facts, I am of the opinion that there is no legal objection to your Department purchasing from the Dillon Supply Company tools manufactured by the Council Tool Company for the Department of Conservation and Development.

CONTRACT FOR ELECTRIC POWER SERVICE; LENGTH OF TIME FOR WHICH CONTRACT MAY BE MADE

17 February, 1943.

I have your letter of February 16, referring to a proposed contract with the Carolina Power & Light Company covering the electric power service, which contains a clause providing for a 2 per cent discount in case the contract is for a term of five years or longer, and

3 per cent for ten years. You request my advice as to whether or not a contract may be made extending beyond the biennium or for a period longer than two years.

My opinion must be confined to a contract of this particular character. As to a contract for electric service, I am of the opinion that you would be authorized to make a contract extending beyond the biennium and for a period longer than two years, as this contract relates to proprietary affairs of the State and would not interfere with any discretionary power which will be invested in any succeeding administrations. The contract itself provides that the rates are subject to the regulatory power of the State Utilities Commission.

The Supreme Court of this State held, in the case of Plant Food Co. v. Charlotte, 214 N. C. 518, that a principal corporation might make a contract covering a period of ten years for the delivery of sludge from the city disposal plant, in which the distinction above referred to is made by the Court as to contracts which may or may not be made extending beyond the term of office of the incumbents in a municipality.

TAXATION; GASOLINE; EXEMPTION; USED IN PUBLIC SCHOOL
TRANSPORTATION

19 January, 1944.

You have requested my opinion upon the following matter.

Public Laws, 1941 c. 119, exempted gasoline used in public school transportation from the State gasoline tax and provided that "any person, firm or corporation holding a North Carolina State contract for the sale of gasoline to be used in public school transportation in North Carolina shall invoice gasoline so sold and delivered to the county boards of education at the prevailing contract price, less the State tax on gasoline." You state that in view of the present gasoline shortage it is frequently impossible for the gasoline company, or companies, on State contract to obtain and supply gasoline at the times and places it is needed to keep school busses running throughout the State. You further state that in order to provide for this emergency your Division has granted authority for the purchase of gasoline from any available source or supply. You inquire whether such authority constitutes an agreement or contract with all gasoline companies which would enable them to invoice the gasoline less the tax within the provisions of the law referred to above

In my opinion the procedure to which you refer is sufficient in this emergency to exempt the gasoline so purchased from the tax. If the orders are placed by the school authorities or other agencies under your specific authority, it may be said that each order constitutes an approved contract between the State and the gasoline company and that the provisions of the law have been complied with.

OPINIONS TO STATE SCHOOL COMMISSION
and
STATE BOARD OF EDUCATION

SCHOOLS; PER CAPITA ENROLLMENT BASIS; DETERMINATION BY
STATE SCHOOL COMMISSION

20 August, 1942.

I am in receipt of your letter of August seventeenth, in which you inquire as to whether the pupils taught in certain institutions maintained with funds received from private sources should be included by the State School Commission in arriving at the per capita enrollment basis in the administrative units in which these institutions are located.

It is provided in section fifteen of the School Machinery Act, that county-wide current expense school funds and county-wide debt service funds shall be apportioned to the county and city administrative units on a per capita enrollment basis, and that the per capita enrollment basis shall be determined by the State School Commission and certified to each administrative unit.

From the facts set out in your letter, it appears that there is no obligation on the part of the county or city administrative units, in which the institutions about which you inquire, are located to furnish or maintain the buildings and equipment used in connection with teaching the children maintained in said institutions. There seems to be no obligation on the part of the county and city administrative units in so far as these particular children are concerned. If this is true, it is my opinion that the State School Commission would be justified in excluding the children taught in these institutions in determining the per capita enrollment basis for certification to the various administrative units.

SCHOOL LAW; STATE BOARD OF EDUCATION; AUTHORITY OF STATE BOARD
WITH RESPECT TO DISTRIBUTION OF TEACHERS BETWEEN
SCHOOLS OF SAME DISTRICT

9 November, 1943.

The State Board of Education has requested an opinion from the Attorney General with respect to the authority of the State Board of Education over the distribution of teachers as between schools in the same district in a county. Five specific questions have been submitted.

The first question submitted is whether the State Board of Education has authority to review by appeal or otherwise the action of the county authorities in making a distribution of teachers as between different schools of a district.

Under Section 8 of the School Machinery Act, the State Board of Education makes allotments of teachers by district. The statute provides, in part: ". . . The State Board of Education shall determine for each administrative unit, by districts and races, the number of elementary and high school teachers to be included in the State Budget. . . ." Under Section 7, the following provisions appear:

"The principals of the districts shall nominate and the district committees shall elect the teachers for all the schools of the districts, subject to the approval of the county superintendent of schools and the county board of education. The district distribution of the teachers between the several schools of the district shall be subject to the approval of the county board of education."

Under the statutes cited, the only authority given to the State Board of Education is that of allotting teachers to the districts. Distribution within the districts among the several schools thereof is made in the first instance by the district committee when it elects teachers for the schools of the district. The distribution of teachers thus effected is made subject to the approval of the county board of education. Unless authority for review by the State Board of Education is to be found in Section 9 of Article IX of the Constitution, outlining the powers and duties of the Board, action of the county authorities is final and the State Board of Education has no power to review their action. If authority to review such action is to be found, it must be by virtue of the authority granted the State Board of Education under the Constitution, "generally to supervise and administer the free public school system of the State."

It will be noted that the power to supervise and administer is by the express language of the Constitution a general power. Under existing statutes, distribution of teachers among the schools of a district is a problem which is specific and local rather than general. In my opinion, the Constitution does not contemplate that local matters of this character shall be decided by the State Board of Education, either in the first instance or by appeal or other method of review, in the absence of a grant of statutory authority for such action from the General Assembly.

The second question submitted is whether the State Board of Education, if it has no authority under the School Machinery Act or under the Constitution to review the action of the local authorities in distributing teachers within a district, may adopt a rule or regulation which, when adopted, will give interested parties the right to appeal to the State Board of Education from the action of the local authorities.

Section 9 of Article IX of the Constitution provides that, in addition to the general power to supervise and administer the public school system, the State Board of Education may "make all needful rules and regulations in relation thereof." In my opinion, the powers of the State Board of Education may not be enlarged by the adoption of rules and regulations. The grant of authority to make rules and regulations is a device intended to enable the Board to exercise and execute powers elsewhere granted to the Board. If the Board does not have authority to review local actions under the Constitution

or under the provisions of the School Machinery Act, its powers may not be increased in this respect by the adoption of rules and regulations.

The third question submitted is whether a rule or regulation of the type mentioned in question number two could be made retroactive.

Since the State Board of Education is advised that it has no authority to make such a rule or regulation, it is unnecessary to decide whether such a regulation could be made retroactive.

The fourth question presented is, if the State Board of Education has no authority to adopt a rule or regulation of the type already discussed, what matters of school administration it may make rules and regulations for, under Section 9 of Article IX of the Constitution.

This question is so comprehensive in nature that it is thought undesirable to attempt to answer it at the present time. It would take months of study to make an accurate list of the specific matters which can be made the subject of rules and regulations under the constitutional provisions. Even if such a study were attempted, it would be probable that important matters unanticipated at the time of the study would be overlooked. In my opinion, it is far more practical and more desirable to attempt to determine the authority of the State Board of Education with reference to specific questions as they arise, rather than to attempt at once to anticipate all the problems with which the Board may be confronted and to outline in one opinion all of the matters which may be made the subject of rules and regulations.

The fifth question presented is, under what circumstances, if any, dissatisfied patrons of a particular school in a district, may obtain through the Superior Court judicial review of the action of the county school authorities with respect to the manner of distribution of State allotted teachers as between the different schools of the district.

The generally accepted method for judicial review of the action of administrative authorities where no appeal is provided by statute is by writ of *certiorari*. The leading case in North Carolina discussing the availability of this writ is *Pue v. Hood*, 222 N. C. 310. This case holds that an administrative action, discretionary in character, is not ordinarily subject to review by *certiorari* or otherwise. In my opinion, the power to distribute teachers as between schools of the same district, exercised by district committees with the approval of the county board of education, is a discretionary power within the meaning of this decision. Under the *Pue* case, the action of the local authorities could not be successfully assailed by court action unless it could be shown that the local authorities acted capriciously, in bad faith, or in disregard of law.

INVESTMENT IN FEDERAL CERTIFICATES OF SURPLUS IN STATE LITERARY FUND

28 April, 1944.

I have your letter of April 27, in which you ask my opinion as to whether or not the State Board of Education would have the right to invest the cash balance now in the State Literary Fund in certifi-

cates of indebtedness of the United States Government, which run for a period of one year and bear interest at seven-eighths of one per cent. You advise that on account of war conditions, it is now impractical to invest these funds in the construction of school houses and that, from a patriotic standpoint as well as to secure the revenue which might be derived therefrom, it might be desirable to make such temporary use of these funds.

I regret to state that after an examination of our statutes, I am unable to find any provision which would authorize the State Board of Education to make this investment, and, on the contrary, the law definitely fixes the purposes for which the funds can be utilized. This law is found in General Statutes 115-220, which provides that the State Board of Education, under such rules and regulations as it may deem advisable, may make loans from the State Literary Fund to the county board of education of any county for the building and improving of public school houses or dormitories for rural high schools and teacherages. Other provisions in the law prescribe the terms on which the loans can be made and methods of repayment.

As the duty of the State Board of Education in this matter is entirely controlled by statute, in the absence of statutory authority to make investments in Federal securities, I could not advise that it could be legally done.

You also make a similar inquiry as to funds accumulated in the State Textbook Division budget.

I think that the same conclusion would follow as to these funds and that, in order to invest them as contemplated, it would be necessary to have an act of the General Assembly expressly permitting it.

I regret that I am unable to find any authority which would enable me to reach a contrary conclusion.

SCHOOLS; ADMINISTRATIVE OFFICERS; SALARIES OF CITY
SUPERINTENDENTS; SUPPLEMENT

9 May, 1944.

Receipt is acknowledged of your letter of May 5 in which you raise the question as to the authority of the State Board of Education to pay additional compensation to the superintendent of a city administrative unit who has acted during the present school year as principal of a high school in his city administrative unit.

Section 6 of the School Machinery Act of 1943 provides that the salaries of county superintendents and city superintendents shall be in accordance with a State standard salary schedule to be fixed and determined by the State Board of Education as provided for in Section 12 of the Act. The salary schedule is to be determined on the same basis for both county and city superintendents and the Board is to take into consideration the amount of work inherent to the office of both county and city superintendents. The schedule adopted by the State Board of Education is to be published in the same way and manner as schedules for teachers' and principals' salaries are published. This section contains a proviso making it lawful for the county superintendent of schools in any county, with the approval of the

State Superintendent of Public Instruction, to serve as principal of a high school of said county and authorizing the payment of a sum not exceeding \$300.00 from the State institutional service funds which is to be added to his salary and included in the budget approval by the State Board of Education. There is no provision in this section for additional compensation to be paid from State funds to a city superintendent for acting as principal of a school within his city administrative unit.

I assume that the Superintendent about which you inquire has been paid a salary according to the salary schedule adopted by the State Board of Education during the present term and that the allotment of funds to the City Administrative Unit was made on this basis.

It is my opinion that the City Superintendent's salary could not be supplemented from State funds and I am unable to find any statute which, to my mind, would authorize such payment. Of course, if the City Administrative Unit desires to supplement the salary of the Superintendent from local funds, I know of no statute which would prohibit this course of procedure.

SCHOOLS; TEACHERS' SALARIES; REGULATION BY STATE
BOARD OF EDUCATION

16 June, 1944.

Receipt is acknowledged of your letter of June 16 in which you inquire as to the legality of the action taken by the State Board of Education with reference to teachers' salaries for the school year 1943-1944.

Section 9 of Article IX of the Constitution of North Carolina provides, among other things, that the State Board of Education shall have power to regulate the grade, salary and qualifications of teachers. Section 9 of the School Machinery Act of 1939, as amended, provides, in part, that the State Board of Education shall effect all economies possible in providing State funds for the objects of general control, operation of plant, and auxiliary agencies, and after such action, shall have authority to increase or decrease on a uniform percentage basis the salary schedule of teachers, principals and superintendents, in order that the appropriation of State funds for the public schools may insure their operation for the length of term provided in the School Machinery Act.

When Section 9 of Article IX of the Constitution and Section 9 of the School Machinery Act of 1939, as amended, are construed together, it appears to me that the State Board of Education is instructed to effect every possible economy in allotting State funds for the items included in general control, operation of plant and auxiliary agencies, and after having made the necessary allotments to general control, operation of plant and auxiliary agencies, is vested with authority to increase or decrease on a uniform basis the salaries of teachers, principals and superintendents, with the limitation that the increases, if any, allowed by the Board shall not exceed the balance remaining in the appropriation made by the General Assembly for the public schools.

In an informal discussion heretofore held with certain members of the staff of this office, it appeared that the only definite action taken by the State Board of Education relative to an increase in teachers' salaries was taken June 8, 1944, after the schools of the State had closed and the teachers had been paid the final installment on their compensation for the school year 1943-1944. The question then arose as to whether such action would not be prohibited by Section 17 of Chapter 530 of the Session Laws of 1943, known and designated as the Appropriations Act of 1943, which provided that appropriations made to the departments, institutions, boards, commissions and public schools under Section 1 of the Act contained amounts sufficient to provide a war bonus to public school teachers and other State employees and should be applied to public school teachers' and other employees' salaries only as provided in the schedule contained in the section.

You can readily see that if the first action taken by the Board had occurred on June 8, 1944, the increase in teachers' salaries authorized by the Board might well have been considered as a bonus rather than an increase in salary and if such were the case would be prohibited by Section 17 of the Appropriations Act of 1943.

It now appears from an inspection of the excerpts of the minutes of the State Board of Education furnished with your request for an opinion that the State Board of Education, on November 10, 1943, took official action to the effect that any surplus in the school fund for the school year 1943-1944 be used to increase teachers' salaries rather than to allot additional teachers to relieve the teaching load in the primary grades, and that at a meeting held on December 9, 1943, it was decided to postpone until April 1944 definite action as to the amount of the increase in order that the Board might be able to determine with accuracy the amount of funds actually available. This was followed by action on June 8, 1944, fixing the exact amount of the increase after it was determined the exact amount of funds available.

It is my opinion that a liberal interpretation of the constitutional provisions, the statutory enactments applicable to the actions of the Board, and the actions of the Board pursuant thereto, would justify the salary increases adopted by the Board. To my mind, the action taken by the Board on November 10, 1943, and on December 9, 1943, would constitute a definite appropriation of the funds remaining in the State school fund for the school year 1943-1944 to an increase in teachers' salaries for the school year, and the action taken on June 8, 1944 and re-affirmed on June 16, 1944, should only be considered as carrying out the details in connection with the definite action theretofore taken by the Board. If this is true, the additional compensation allowed the teachers would, in my opinion, be a salary increase rather than a bonus.

OPINIONS TO STATE COMMISSION FOR THE BLIND

LIABILITY OF BLIND MERCHANTS FOR STATE SALES TAX

31 July, 1942.

You inquire whether blind persons engaged in business as whole-sale or retail merchants, whose net income is less than \$1,200.00, are required to report and pay the State sales tax.

Public Laws 1933, Chapter 53, provides that blind persons operating legitimate businesses of any kind to make a living for themselves and their dependents; if any, may be relieved from the necessity of paying for any privilege license, if such persons and the husbands or wives of such persons having a net income per annum of less than \$1,200.00. That Act provides for application to the county commissioners, investigation, and if it appears that the applicant is entitled to the exemption, for the exemption from state, county, and municipal privilege licenses.

Public Laws 1939, Chapter 306, amended the law referred to above by changing all references to "privilege license" to "privilege or other license."

Section 401 of the Revenue Act of 1939 states that the sales tax "is levied as a license or privilege tax for engaging or continuing in the business of a 'wholesale' or 'retail' merchant as defined in this Article."

I am of the opinion that under the statutory provisions referred to, blind persons otherwise meeting the requirements of Public Laws 1933, Chapter 53, may obtain exemption from the payment of sales tax.

LIABILITY FOR BLIND MERCHANTS FOR STATE SALES TAX

2 November, 1942.

You inquire whether blind persons engaged in business as whole-sale or retail merchants, whose net income is less than \$1,200.00, are required to report and pay the State sales tax.

Public Laws 1933, Chapter 53, provides that blind persons operating legitimate businesses of any kind to make a living for themselves and their dependents, if any, may be relieved from the necessity of paying for any privilege license, if such persons and the husbands or wives of such persons have a net income per annum of less than \$1,200.00. That Act provides for application to the county commissioners, investigation, and if it appears that the applicant is entitled to the exemption, for the exemption from State, county, and municipal privilege licenses.

Public Laws 1939, Chapter 306, amended the law referred to above by changing all references to "privilege license" to "privilege or other license."

Section 401 of the Revenue Act of 1939 states that the sales tax "is levied as a license or privilege tax for engaging or continuing in the business of a 'wholesale' or 'retail' merchant as defined in this Article."

I am of the opinion that under the statutory provisions referred to, blind persons otherwise meeting the requirements of Public Laws 1933, Chapter 53, may obtain exemption from the payment of sales tax.

PENSIONS; AID TO THE NEEDY BLIND; BENEFITS; PAYMENT;
DEATH OF GRANTEE

21 September, 1942.

You state in your letter of September 10 that the Social Security Board states that its policy permits Federal matching of payments made to recipients under your program who die before endorsing or cashing their assistance checks only when, under State law, payment is completed on or before the date of death. You desire to know when, in my opinion, payment is completed under the law authorizing such payments and under the rules and regulations promulgated by your Commission in connection therewith.

Section 5126(18) of Michie's North Carolina Code of 1939 Annotated provides:

"After an award to a blind person has been made by the board of county commissioners, and approved by the North Carolina State Commission for the Blind, the North Carolina State Commission for the Blind shall thereafter pay to such person to whom such award is made the amount of said award in monthly payments, or in such manner and under such terms as the North Carolina State Commission for the Blind shall determine. Such payment shall be made by warrant of the State Auditor, drawn upon such funds in the hands of the State Treasurer, at the instance and request and upon a proper voucher signed by the Executive Secretary of the North Carolina State Commission for the Blind, and shall not be subject to the provisions of the Executive Budget Act as to approval of said expenditure."

It will be noted that the above Section provides that after the award is made, it shall be paid in monthly installments or in such manner and under such terms as the North Carolina State Commission for the Blind shall determine. I am informed that the North Carolina State Commission for the Blind has determined that the awards are to be paid in monthly installments and that the checks are dated the first day of each month but are actually executed on the last day of the preceding month and are placed in the mail prior to twelve o'clock midnight on the same date. When a particular payment or award becomes due, the pensioner's right to the payment or award is generally considered vested. In *Re Smith*, 130 N. C., 638. Where the pensioner actually receives the check before his death, the delivery, of course, would be complete. By depositing an instrument, such as the check, representing the award in the mail with the intent that

it is to be transmitted to the payee in the usual way, the maker parts with his dominion and control over it and the delivery is in legal contemplation complete.

It is my opinion that where an award has been made by your Commission and the check representing the monthly payment on such award is issued by the Commission and placed in the mail on the afternoon or evening preceding the first day of the month, and the payee is alive at any time on the first day of the month, the check becomes the property of such payee and his subsequent death would not have the effect of returning the beneficial and legal ownership to the State of North Carolina.

It is my opinion that the method used by the State Commission for the Blind in handling payments of the amounts represented by the awards made by the Commission is amply justified under the provision of the law authorizing the Commission to make such awards and payments.

BLIND PERSONS; RESIDENCE; CHANGE BY REASON OF JUDGMENT IN
CRIMINAL CASE

13 November, 1942.

You state in your letter that a blind person, who was a resident of Wayne County, was given a sentence suspended on condition that he remain out of Wayne County for a period of 12 months. You desire to know whether this person would lose his residence in Wayne County as a result of his removal therefrom under these circumstances.

It is my opinion that unless the person referred to intended to become a resident of the county to which he moved, he would not lose his residence in Wayne County. The fact that he was forced to leave Wayne County temporarily would not, within itself, deprive him of his right to claim Wayne County as his place of residence.

OPINIONS TO GREATER UNIVERSITY

RECEIVERSHIP OF M. T. SMITH, EX-CLERK SUPERIOR COURT,
ROCKINGHAM COUNTY

27 October, 1942.

I received your letter of October 24 enclosing a letter to you from Miss Susie Sharp, relative to the above matter.

I understand from the correspondence that the University has filed a claim for \$4,922.78 for alleged escheats which have been collected and are in the hands of the former Clerk, Mr. M. T. Smith, Miss Sharp takes the position that the claim is barred by the statute of limitations, in that the collections were all made more than six years prior to the time that the action was instituted on the bond of the ex-clerk.

I must agree with you that the statute of limitations is applicable to the State and the University, an agency of the State, by virtue of C. S. 429. A claim upon an official bond of a public officer is barred in six years. C. S. 439(1). I regret, therefore, to state that I must conclude that the claims which had accrued more than six years prior to the institution of the action would be barred by the statute of limitations.

ESCHEATS RECORDS; RIGHT OF PERSON TO EXAMINE

13 November, 1942.

I have your letter of November 11, enclosing copy of a letter from Miss Marybelle Delamar under date of November 10, in which she is insisting upon being granted permission to search your escheats records as to estates valued at \$1,000 or more. Your letter states that you have heretofore permitted any person to make an examination of your records as to any particular escheat, but that you have considered that the records were not open to curious individuals for making a general search.

Chapter 121(a) of Michie's Code, entitled "Public Records," defines, in Section 7362(1), public records to comprise all written or printed books, papers, letters, documents and maps made and received in pursuance of law by the public offices of the State and its counties, municipalities and other subdivisions of government in the transaction of public business. Section 7362(6) provides that every person having the custody of public records shall permit them to be inspected and examined at reasonable times, and under his supervision, by any person, and he shall furnish certified copies thereof on the payment of fees as prescribed by law.

There may be some question as to whether or not the records of escheats kept by the University are public records kept by a public office of the State within the definition of the statute, but it is at least a border line question and the courts might hold that it is within the purview of the statute. I am inclined to think that more harm would

be done by refusing permission to examine these records, at reasonable times and under reasonable conditions, than permitting this to be done.

In case these records were examined by any person who used the examination for the purpose of instigating or promoting litigation, such person might be guilty of barratry and subject to conviction under the laws of this State. See *State v. Batson*, 220 N. C. 411.

UNIVERSITY; TUITION; RESIDENTS

3 December, 1942.

The question raised in the Memorandum of Mr. J. A. Williams and in the letter from the Clerk of the Superior Court of Buncombe County both deal with the question of residence as used in determining whether a student at the University of North Carolina should be required to pay out-of-State tuition rates on account of nonresidence. In many cases it is necessary to determine the residence of the parents, as the residence of a minor is that of his parents or guardian unless such minor has been emancipated to the extent sanctioned by the decisions of our Supreme Court. In determining the residence of a particular parent, all available facts must be taken into consideration. The Supreme Court of North Carolina and the courts of other jurisdictions have defined the term "residence" in numerous cases.

In the Case of *Watson v. Railroad*, 152 N. C. 215, 216, the court said:

"The word 'residence' has, like the word 'fixtures,' different shades of meaning in the statutes (*Overman v. Sasser*, 107 N. C. 432), and even in the Constitution, according to its purpose and the context."

In the same Case, at page 217, the court continuing its discussion on the meaning of the word "residence," said:

"Probably the clearest definition is that in *Barney v. Oelrichs*, 138 U. S. 529: 'Residence is dwelling in a place for some continuance of time, and is not synonymous with domicil, but means a fixed and permanent abode or dwelling as distinguished from a mere temporary locality of existence; and to entitle one to the character of a "resident," there must be a settled, fixed abode, and an intention to remain permanently, or at least for some time, for business or other purposes.' To same effect *Coleman v. Territory*, 5 Okl., 201: 'Residence indicates permanency of occupation as distinct from lodging or boarding or temporary occupation. "Residence" indicates the place where a man has his fixed and permanent abode, and to which, whenever he is absent, he has the intention of returning.' In *Wright v. Genessee*, 117 Michigan, 244, it is said: 'Residence means the place where one resides; an abode, a dwelling or habitation. Residence is made up of fact and intention. There must be the fact of abode and the intention of remaining.' And in *Silvey v. Lindsay*, 42 Hun. (N. Y.), 120: 'A place of residence in the common-law acceptation of the term means a fixed and permanent abode, a dwelling-place for the time being, as contradistinguished from a mere temporary local residence.'"

In the case of *Wright v. Genesse*, 117 Michigan, 244, the court, citing the case of *Watson v. Railroad*, *supra*, said:

"Residence means the place where one resides: an abode, a dwelling or habitation. Residence is made up of *fact* and *intention*. There must be the fact of abode and the intention of remaining."

In the case of *Brann v. Hanes*, 194 N. C., 571, at 577, the court, in discussing the meaning of residence, said:

"All the authorities sustain the following statement of the law: Actually ceasing to dwell within a state for an uncertain period without definite intention as to any fixed time of returning constitutes nonresidence, even though there be a general intention to return at some future time."

The case of *Watson v. Railroad*, *supra*, was cited with approval in the case of *Howard v. Coach Company*, 212 N. C., 201, 202.

In the case of *Discount Corporation v. Radecky*, 205 N. C., 263, the court, in discussing the meaning of the word "residence," said:

"The term 'residence' has one fixed meaning which is applicable to all cases, its definition in a particular case depending upon the connection in which it is used and the nature of the subject to which it pertains."

Applying these definitions to the case of the residence of the parents of Janice Feitelberg, it appears to me that if the father of Janice Feitelberg brought his family to the State of North Carolina for the purpose of accepting a job as a civilian worker in the Quartermaster's Corps at Camp Davis, with the intention of returning to the State of New York immediately upon the completion of his duties at Camp Davis, he and his wife would only be considered as being in the State of North Carolina for a temporary purpose and would not become residents of the State of North Carolina for the purposes under consideration within the meaning of the term "residence," as defined in the decisions of our courts and the courts of other states.

However, if the father brought his family to the State of North Carolina with the intention of remaining in the State, even after his temporary employment at Camp Davis has ended, that is to say that he intended to remain in North Carolina permanently, he and his wife would be considered residents of the State of North Carolina.

The residence status of patients at Oteen Hospital should be considered on the same basis and if such persons are able to furnish sufficient evidence of the fact of physical presence with the intention of permanently remaining in the State of North Carolina, you would be justified in considering them as residents of the State for the purpose of fixing the amount of tuition payments. Otherwise, you would not be justified in so holding.

In the final analysis, the question of residence is a question of fact to be determined by the proper authorities of the University of North Carolina in each particular case.

UNITS OF STATE GOVERNMENT NOT PROHIBITED BY CHAPTER 122,
P. L. 1939, TO MAKE SALES TO U. S. NAVY

29 January, 1943.

You inquired over the 'phone this day whether or not the University Book Exchange is prohibited by Chapter 122 of the Public Laws of 1939 from buying for or selling to the United States Navy certain furniture and equipment for buildings occupied by the Navy at the University of North Carolina.

Section 1 of said Chapter 122 of the Public Laws of 1939 provides that no unit or agency of the State Government, etc., can purchase for or sell to any person, firm or corporation any article of merchandise in competition with citizens of the State. It will be noted that the agencies referred to are limited in their sales to persons, firms or corporations. It occurs to me that the United States Navy is an agency or department of the Federal Government and would not be bound by the provisions of this Act unless it was specifically included within the prohibitory provision of the statute. The United States Navy is not a person, firm or corporation included in this Act, to which the University Book Exchange is prohibited to make sales.

It is my opinion, therefore, that the University Book Exchange may contract and sell to or buy for the United States Navy furniture, equipment, etc., for the purpose of equipping buildings leased by or occupied by the United States Navy at the University of North Carolina.

"GREATER UNIVERSITY;" WORKMEN'S COMPENSATION ACT; STATE
ACTS AS SELF-INSURER

17 July, 1943.

I acknowledge receipt of your letter in which you state that the University acts as a self-insurer, under the Workmen's Compensation Act, for all of its employees who are regularly engaged in work at the University; that the University has entered into certain contracts with the United States Government necessitating the University employing additional personnel, and that the amount involved in some of the contracts does not seem to warrant the University in acting as self-insurer.

You inquire as to whether or not the University may purchase Workmen's Compensation insurance to cover the employees engaged in the performance of duties incident to the contracts with the United States Government.

The State and all of its departments, agencies and institutions act as self-insurers and I do not know of any statutory authority which permits any institution of the State to purchase Workmen's Compensation insurance. The only sections of the Statute authorizing the State to purchase insurance are Sections 6449 through 6454, and these sections apply only to fire insurance on the State's property. In the absence of statutory authority, I am of the opinion that the University may not purchase Workmen's Compensation insurance for any of the employees of the University. It also appears to me that

the University would be following a confusing policy to act as a self-insurer as to certain of its employees and purchase compensation as to other employees, as the question would be continuously arising as to whether or not an injured employee was one of those covered by the policy of insurance or one covered by the State as self-insurer.

PERSONNEL ACT; NOT APPLICABLE TO AGRICULTURAL EXPERIMENT
STATION

3 August, 1943.

In response to your inquiry over the telephone, I have examined our law with reference to the Agricultural Experiment Station to determine whether or not it is subject to the Personnel Act.

The Agricultural Experiment Station, by C. S. 5825 and the consolidation act, is made a part of the University of North Carolina and is controlled by the Board of Trustees thereof.

The Division of Personnel under the Budget Bureau is given jurisdiction over the personnel of "every department, bureau and/or commission of the State," which does not include jurisdiction over personnel of the State institutions such as The University of North Carolina. This has been recognized since the adoption of the Personnel Act, Chapter 277 of the Public Laws of 1931. Chapter 326 of the Public Laws of 1939, making an appropriation for the Agricultural Experiment Station for the biennium 1939-1940—1940-1941, however, did provide in Section 2 as follows:

"Sec. 2. That these appropriations shall be subject to the provisions of the Executive Budget Act, Chapter 100 of the Public Laws of 1929, and the provisions of the Personnel Act, Chapter 277 of the Public Laws of 1931, and Chapter 46 of the Public Laws of 1933."

It will be noted that this Act did no more than to provide that "these appropriations" should be subject to the provisions of the Personnel Act and did not other put the personnel of the Agricultural Experiment Station under the jurisdiction of the Personnel Act.

The appropriation made by the Maintenance Appropriations Act of 1943, Chapter 530 of the Session Laws of 1943, is found in Section 1, Title IV, subsection 2. Section 21 of Chapter 530 says that the provisions of the Executive Budget Act and the Personnel Act are reenacted and shall remain in full force and effect, but no provision was made as was done in the 1939 Act making the appropriations to the Experiment Station subject to the provisions of that law.

CLERK SUPERIOR COURT; INVESTMENT OF FUNDS, AND
COMMISSIONS THEREON

14 October, 1943.

I acknowledge receipt of your letter in which you state that there are certain potential escheat funds in the office of the Clerk of the Superior Court of Buncombe County, a part of which are invested

and the other not invested. You state that the Clerk has raised the following two questions:

1. Is the Clerk required by law to invest the trust funds which are under his supervision? and,
2. If such funds are invested in approved types of loans, is the Clerk allowed to make any charge against the income for overhead expense?

In answer to your first question, I refer you to Section 962(b), which provides:

"The Clerk of the Superior Court of any county in the State *may* in his *discretion* invest monies secured by color of his office or as receiver in any of the following securities:"

It, therefore, appears that it is entirely in the discretion of a Clerk of the Superior Court as to whether or not he invests funds coming into his hands by virtue or color of his office.

In answer to your second question, I refer you to the latter portion of Section 3903 of the Consolidated Statutes, which provides that a Clerk of the Superior Court is among other commissions, entitled to receive "three per cent on all sums of money not exceeding five hundred dollars (\$500.00) placed in his hands by virtue of his office, except on judgments, decrees, executions, and deposits under Article three of Chapter fifty-four; and upon the excess over five hundred dollars (\$500.00) of such sums, one per cent."

I am, therefore, of the opinion that a Clerk of the Superior Court is entitled to receive 3 per cent on the first \$500.00 and 1 per cent on the excess thereof coming into his hands by virtue or color of his office.

I call your attention to the fact that this section has been modified in several of the counties of the State by Public-Local Acts.

TEACHERS AND STATE EMPLOYEES' RETIREMENT SYSTEM; MEMBERSHIP;
PERSONNEL EMPLOYED AS SUPERVISOR AND ASSISTANT
COUNTY AGENTS AND PAID WITH TVA FUNDS

21 April, 1944.

In your letter of April 15 you raise the question as to the eligibility to membership in the Retirement System of personnel employed as supervisors and assistant county agents who are employed by the College but paid with funds received from the Tennessee Valley Authority. It appears that these particular employees are engaged in work outlined in a contract between the College and the Tennessee Valley Authority and that this contract was in existence at the time of the enactment of the Teachers and State Employees' Retirement Act. It further appears that these employees are employed by the College and that the Tennessee Valley Authority has no connection whatever with such employment.

Prior to July 1, 1943, the funds which were furnished by the Tennessee Valley Authority to the College for the purpose of reimbursing the College for the amount paid out on the salaries of these

employees was not handled through the State Treasury. There seems to have been some prior discussion as to the eligibility of these particular employees to membership in the Teachers and State Employees' Retirement System prior to July 1, 1943. At that time the contract between the Tennessee Valley Authority and the College does not seem to have been presented for consideration and it appeared at that time that these employees were paid directly with Tennessee Valley Authority funds and that they were in reality employees of the Tennessee Valley Authority rather than of the College.

I now have before me the contract between the Tennessee Valley Authority and the College. In the preamble appearing in this contract, it appears that it is the intention of the Tennessee Valley Authority to supplement the funds and facilities of certain agricultural colleges for certain services performed by them in coöperation with the authority. In the main part of the contract itself the College agrees to make available the personnel and incident facilities of the agricultural extension service and to provide additional personnel and facilities to the extent required for the efficient and economical administration of the program according to the terms of the contract. The Authority agrees to provide funds to the institution for the employment by the agricultural extension service of the required additional members of the extension staff. The College agrees to furnish and disburse the funds required to meet the expenditures authorized under the terms of the contract and on or before the first of each calendar month the College submits to the Authority properly certified invoices, in triplicate, covering the disbursements during the preceding month, together with receipted vouchers in support thereof. Upon the receipt of this data, the Authority agrees to reimburse the College for the amount of such invoices as soon after the first day of each calendar month as vouchers thereon can be prepared by the Authority.

The following provision will be found in the contract, which seems to me to be very important as bearing on the decision to be reached in regard to these employees:

"Expenditures and reimbursements hereunder shall comply with administrative procedure established by the institution in co-operation with the Treasurer of the State of North Carolina, or other appropriate officer of said State, and the Institution shall advise Authority, immediately upon the execution of this contract, as to any such procedure."

Under the provisions of the Retirement Act (G. S. 135-3), all persons who were teachers or State employees on February 17, 1941 or who became teachers or State employees on or before July 1, 1941, except those who notified the Board of Trustees in writing on or before January 1, 1942 that they did not choose to become members of the Retirement System, became members of such System. The word "teacher" as defined in the Retirement Act (G. S. 135-1) includes any full-time employee in any educational institution supported by and under the control of the State, and the word "employee" as defined in the Retirement Act includes all full-time employees, agents or of-

ficers of the State of North Carolina or any of its departments, bureaus, and institutions, other than educational, whether such employees are elected, appointed or employed. This definition specifically excludes justices of the Supreme Court and judges of the Superior Court. The word "employer" as defined in the Act means the State of North Carolina, a county board of education, a city board of education, the State Board of Education, the Board of Trustees of the University of North Carolina, the board of trustees of other institutions and agencies supported and under control of the State or any other agency of and within the State by which a teacher or other employee is paid.

It would thus appear that although these employees, other than the supervisor, are designated as assistant county agents, they are in reality the employees of the College within the meaning of the Teachers and State Employees' Retirement Act. If this is true, the persons who were thus employed on February 17, 1941, or who became employed in such work on or before July 1, 1941, became members of the State Retirement System, unless they notified the Board of Trustees of the System, in writing, on or before January 1, 1941 that they did not choose to become members of the Retirement System. Likewise, all persons who became employed in this work by the College after the date as of which the Retirement System was established became members of the System. The fact that funds prior to July 1, 1943 were handled through the Wachovia Bank and Trust Company rather than through the Treasurer of the State of North Carolina would not change my views due to the fact, as above pointed out, that the contract specifically provides that the expenditures and reimbursements are to comply with the administrative procedure established by the College in coöperation with the Treasurer of the State of North Carolina. The fact that the funds were not handled through the office of the Treasurer of the State of North Carolina should not be held to deprive this particular group of employees of the benefits to which they would otherwise be entitled under the provisions of the Retirement Act.

As the opinions of this office are advisory only and are not binding on the courts of the State, it is my thought that it would be advisable to present this question to the Board of Trustees of the Retirement System and if the Board is inclined to agree with my views in the matter, it might be advisable for the Board to find that this particular group of persons is entitled to membership in the Retirement System from the date of its establishment.

OPINIONS TO RETIREMENT SYSTEM

TEACHERS AND STATE EMPLOYEES RETIREMENT SYSTEM; PERSONS ENTITLED TO RECEIVE BENEFITS UNDER PROVISIONS OF HOUSE BILL NO. 844; BENEFITS TO WHICH ENTITLED

23 March, 1943.

You inquire as to the classes of persons entitled to receive benefits under the provisions of House Bill No. 844 and as to what benefits persons found to be eligible would receive under the provisions of said Act.

Under the provisions of House Bill No. 844, two classes of persons are eligible to receive benefits:

(1) Former classroom teachers who were 65 years of age or more on March 10, 1943, who have taught for a total of 20 or more years in the public schools of North Carolina, who were not teaching in the public schools of the State on February 17, 1941, and whose cessation of employment as teachers was not due to any dishonorable cause.

(2) Persons who have been classroom teachers in the public schools of North Carolina for a total of 20 or more years who were not teaching in the public schools of this State on February 17, 1941, whose cessation of employment as teachers was not due to any dishonorable cause and who by reason of physical disability were on March 10, 1943, unable to teach.

In order for persons in either class to be entitled to receive benefits under the provisions of this Act, it is necessary that such persons be, in the opinion of the Board of Trustees of the Teachers and State Employees Retirement System, without adequate means of support, either by reason of lack of gainful employment, lack of income from property, or inadequate support by husband or wife.

The amount of benefits to which a person would be entitled to receive if he or she meets all the other requirements of the Act would depend on the number of years of prior service rendered by each particular applicant for benefits. To my mind, the General Assembly, in enacting House Bill No. 844, intended that each applicant who is able to establish eligibility for benefits would be entitled to have considered in arriving at the amount of benefits all North Carolina service as a teacher rendered by the applicant prior to February 17, 1941. The amount of benefits to which persons made eligible under the provisions of House Bill No. 844 are entitled should be calculated under the provisions of the Teachers and State Employees Retirement Act.

TEACHERS AND STATE EMPLOYEES RETIREMENT SYSTEM; EMPLOYER'S CONTRIBUTIONS; CONTINUANCE OF CONTRIBUTIONS ON ACCOUNT OF MEMBERS WHO HAVE PASSED THE AGE OF 60 YEARS

7 June, 1943.

You inquire as to whether in my opinion employers should continue to make contributions under the provisions of the Teachers and State Employees Retirement Act on account of members who have already reached the age of 60 years.

Subdivision (a) of subsection 3 of Section 8 of Chapter 25 of the Public Laws of 1941 provides that on account of each member there shall be paid annually in the pension accumulation fund by employers for the preceding fiscal year an amount equal to a certain percentage of the earnable compensation of each member, to be known as the normal contribution, and an additional amount equal to a percentage of his earnable compensation, to be known as the accrued liability contribution. Subdivision (e) of this subsection, which was added by virtue of House Bill No. 351, enacted by the General Assembly of 1943, provides that each employer shall transmit monthly to the State Retirement System on account of each employee who is a member of this system, an amount sufficient to cover the normal contribution and the accrued liability contribution of each member employed by such employer for the preceding month.

Subsection 2 of Section 5 of the Teachers and State Employees Retirement Act sets out the formula for arriving at the allowance for service retirement, which is as follows:

“(2) Upon retirement from service a member shall receive a service retirement allowance which shall consist of:

(a) An annuity which shall be the actuarial equivalent of his accumulated contributions at the time of his retirement; and

(b) A pension equal to the annuity allowable at age of sixty years computed on the basis of contributions made prior to the attainment of age sixty; and

(c) If he has a prior service certificate in full force and effect, an additional pension which shall be equal to the annuity which would have been provided at age of sixty years by twice the contributions which he would have made during such prior service had the system been in operation and he contributed thereunder.”

I have heretofore expressed the view that the contributions of the employer should stop when the member reaches the age of 60. This view was based primarily on the fact that the pension portion of the allowance which is provided from employers contributions is to be computed on the basis of contributions made prior to the attainment of age 60. Since this view was expressed, I have had further opportunity to consider the Teachers and State Employees Retirement Act as a whole and in so doing I have come to the conclusion that it was the intent of the retirement act that the employer should pay a certain percentage of the salaries of all members so long as they remain in service but that the percentage at which the employer pays would be sufficient only to match the annuities provided by the members' contributions at age 60. The rate of the employers' contributions is fixed on the basis of the liabilities of the retirement system as shown by actuarial valuation.

This being true, it is difficult to see how there can be any difference in the ultimate liability of the employer whether the employers' contributions stop at age 60 or continue so long as the member remains in service. If contributions on account of a member stop at age 60, there would be less paid into the pension accumulation fund and as a result the percentage of the earnable compensation of the member to be paid by the employer would be greater than if contributions continue so long as the member remains in service.

The position that contributions should continue so long as a member remains in service is strengthened by the fact that the General Assembly of 1943 provided that the employer is to transmit monthly to the retirement system, on account of each employee who is a member of this system, an amount sufficient to cover the normal contribution and the accrued liability contribution of each member employed by such employer for the preceding month. This expresses a clear intention on the part of the General Assembly that employers' contributions should continue so long as the member remains in service.

It is my thought that you should advise all employers to this effect in order that they may make preparations during the coming fiscal year to comply with the retirement act as to employers' contributions, on the basis above outlined.

TEACHERS AND STATE EMPLOYEES RETIREMENT SYSTEM; LEAVE OF
ABSENCE; EMPLOYERS AND EMPLOYEES CONTRIBUTIONS

10 December, 1943.

Receipt is acknowledged of your letter of December 9 in which you state that one M. R. Vickers, who was employed in the Oxford City Schools and paid partly by the State and partly by the local unit, was given a leave of absence and inducted in the army in July 1942. You further state that Mr. Vickers has been paying into the retirement system 4 per cent of the salary he was earning at the time he was given the leave of absence, and that the State of North Carolina is paying into the system the employers contribution on the portion of the salary paid from State funds. You desire to know whether, in my opinion, the Oxford City Administrative Unit may be required to pay employers contributions on that portion of the salary paid from local funds.

The General Assembly of 1943 amended Section 8 of the Teachers and State Employees Retirement Act by adding a new subdivision, designated as Subdivision (e), and which contains the following language:

"Subject to the approval of the board of trustees, any member, who is on leave of absence on account of military service or for any other purpose which might tend to increase the efficiency of the service of the member to his or her employer, may make monthly contributions to the retirement system on the basis of the salary or wage such member was receiving at the time such leave of absence was granted."

It is my understanding that pursuant to this amendment to the retirement act, the board of trustees of the retirement system has approved the authorization contained in the above quoted amendment to Section 8.

I assume that Mr. Vickers was employed by the governing body of the local administrative unit and that his employment would be covered by the definition of the word "teacher" as contained in Subsection 3 of Section 1 of the Retirement Act.

Subdivision (c) of Subsection 1 of Section 8 of the Retirement Act provided that each board of education of each county and each board

of education of each city in which any teacher receives compensation from sources other than appropriations of the State of North Carolina shall deduct from the salaries of these teachers paid from sources other than State appropriations an amount equal to that deducted from the salaries of teachers whose salaries are paid from State funds. It is further provided that city boards of education and county boards of education, as to employees in this class, shall pay to the State Retirement System the same percentum of the salaries that the State of North Carolina pays, and shall transmit the same to the State Retirement System monthly.

Subdivision (d) of Subsection 5 of Section 8 of the Retirement Act provides that each board of education in each county and each board of education in each city, in which teachers or other employees of the schools receive compensation for services in the public schools from sources other than the appropriation of the State of North Carolina, shall pay the board of trustees of the State Retirement System such rate of their respective salaries as are paid those of other employees.

To my mind, it was the intention of the General Assembly, in enacting the portion of Section 8 above quoted, to place members who are granted leaves of absence on account of military service or for any other purpose which might tend to increase the efficiency of the services of the member to his or her employer, in the same position as members who remain in service, provided the board of trustees of the Retirement System authorized such arrangement, and provided further that the employee makes the monthly contributions to the Retirement System on the basis of the salary or wage the member on leave was receiving at the time the leave of absence was granted. If this is true, it is my opinion that if the Oxford Administrative Unit granted Mr. Vickers a leave of absence to enter the military service, it would be responsible for and should pay to the State Retirement System the employers' contribution on that portion of the salary paid Mr. Vickers by the city administrative unit, at least from the date of the order passed by the board of trustees of the Retirement System pursuant to the 1943 amendment authorizing employees on leave to make contributions to the Retirement System.

I cannot see how the local unit would be liable for employers' contributions between July 1942, and the date of the order of the board of trustees made pursuant to the 1943 amendment.

This conclusion, to my mind, would be fair both to the employee and to the employer.

TEACHERS AND STATE EMPLOYEES RETIREMENT SYSTEM; CONTRIBUTIONS
BY MEMBERS ON LEAVE OF ABSENCE; PAYMENT OF
EMPLOYERS' CONTRIBUTIONS

21 February, 1944.

Receipt is acknowledged of your letter of February 18 in which you request my opinion as to whether, under the provisions of the Retirement Act, as amended by Chapter 207 of the Session Laws of 1943, an employer is required to make the employer's contributions

on account of a member on leave of absence who makes monthly contributions to the Retirement System.

Under the provisions of Section 3 of Chapter 207 of the Session Laws of 1943, Section 8 of Chapter 25 of the Public Laws of 1941, known and designated as the Teachers and State Employees Retirement Act, was amended by adding a new subdivision designated as Subdivision (e), which provides that subject to the approval of the board of trustees any member who is on leave of absence on account of military service or for any other purpose which might tend to increase the efficiency of the services of the member to his or her employer may make monthly contributions to the retirement system on the basis of the salary or wage such member was receiving at the time such leave of absence was granted.

It appears to me that the purpose of the General Assembly in enacting this particular section of Chapter 207 of the Session Laws of 1943 was to give the employee on leave of absence on account of military service or for some purpose which might tend to increase the efficiency of the services of the member to his or her employer the opportunity to maintain his or her status in the retirement system in the same manner as if such member had remained in the active service of the employer during such period. Of course, the right of any member to take advantage of the provisions of this particular section depends on favorable action being taken by the board of trustees of the retirement system.

In order for a member to take advantage of the provisions of this section, it is necessary that two things appear: (1) That a valid leave of absence has been granted to the member on account of (a) military service or (b) some purpose which would tend to increase the efficiency of the services of the member to his or her employer, and (2) Approval by the board of trustees of the Teachers and State Employees Retirement System.

If an employer gives a member a valid leave of absence for any of the purposes above referred to and the board of trustees of the retirement system has taken favorable action, it is my opinion that the employer would be required to make the employer's contributions under the provisions of the Retirement Act on the basis of the contributions made by the member during the continuation of the leave of absence. If Section 3 of Chapter 207 of the Session Laws of 1943, when considered in connection with the provisions of the Retirement Act, does not mean that employers are required to match the contributions made by members on leave of absence then the effect of the amendment in so far as benefits to the member are concerned would be meaningless. Of course, it must be kept in mind that only the employers required to make contributions under ordinary circumstances would be required to make contributions when the provisions of the amendment are complied with and that employers would only be required to contribute on the proportionate part of the salary of the member on which the employer was required to contribute prior to granting the leave of absence.

TEACHERS AND STATE EMPLOYEES RETIREMENT SYSTEM; MEMBERSHIP;
EMPLOYEES OF BOARD OF EXAMINERS OF PLUMBING AND
HEATING CONTRACTORS

22 May, 1944.

You inquire as to whether in my opinion the employees of the Board of Examiners of Plumbing and Heating Contractors are entitled to membership in the Teachers and State Employees Retirement System.

The General Assembly of North Carolina, by virtue of Chapter 52 of the Public Laws of 1931, as amended, created a State Board of Examiners of Plumbing and Heating Contractors. The provisions of this Act, as amended, appear in the General Statutes of North Carolina as sections 87-16 to 87-27, inclusive. All fees collected under the provisions of the Act are to be paid to the Secretary and Treasurer of the Board and, by him, held as a fund for the use of the Board. The compensation and expenses of the members of the Board, the salaries of its employees, and all expenses incurred in the discharge of the duties of the Board, are to be paid out of the fund, upon warrant of the President and Secretary and Treasurer. There is also a proviso to the effect that upon the payment of the necessary expenses of the Board, as above set out, and the retention by it of 25 per cent of the balance of the funds collected, the residue is to be paid to the State Treasurer.

In the case of *Roach v. Durham*, 204 N. C. 587, the Supreme Court of North Carolina, in discussing the provisions of this Act, said that it was obvious, in the opinion of the Court, that the pervading intent of the Act was to provide for the maintenance of the Board and not to impose a tax as a part of the general revenue of the State.

The fund has not in the past been handled under the provisions of the Executive Budget Act nor have the employees been considered as subject to the Personnel Act.

The word "employee" as defined in the Teachers and State Employees Retirement Act (G. S. 135-1) means all full-time employees, agents or officers of the State of North Carolina or any of its departments, bureaus and institutions, other than educational, whether such employees are elected, appointed or employed. The word "employer" is defined as meaning the State of North Carolina, the county board of education, the city board of education, the State Board of Education, the board of trustees of the University of North Carolina, the board of trustees of other institutions and agencies supported and under the control of the State, or any other agency of and within the State by which a teacher or other employee is paid.

Although it might be possible to construe the words "employee" and "employer," as used in the Retirement Act, as broad enough to technically include the employees of this Board, without consideration of the language used in the Act creating the Board as to the purposes for which the fund is created and the method used in its handling, it is my opinion that when the two Acts are construed together, the employees of the Board would not be entitled to membership in the Teachers and State Employees Retirement System.

OPINIONS TO DEPARTMENT OF MOTOR VEHICLES

EFFECT OF REQUIREMENT THAT COMMISSIONER BE NOTIFIED BEFORE SALE UNDER MECHANICS OR STORAGE LIENS OR UNDER JUDICIAL PROCEEDINGS

13 July, 1942.

You request my opinion upon the following question.

Public Laws 1937, Chapter 407, Section 78, paragraph (c), provides that it is the duty of every sheriff or other officer to make immediate report to the Commissioner of Motor Vehicles of motor vehicles that are abandoned or seized for illegal transportation of liquors or other unlawful purposes and that "no motor vehicle shall be sold by any sheriff, police or peace officer, or by any person, firm or corporation, claiming a mechanic's or storage lien, or under judicial proceedings, until notice shall have been given the Commissioner, at least 30 days before the date of such sale." You state that in some instances the requirement for notice to the Commissioner is not complied with and you inquire whether when there has been a failure to give the statutory notice you are authorized nevertheless to issue title to the purchaser, or whether you must insist that the notice be given and a resale made.

The obvious purpose of this statute was to enable the Department of Motor Vehicles to investigate the title of automobiles sold in judicial proceedings or under mechanic's or storage liens with a view to preventing fraudulent sales or sales of stolen vehicles. The provision is for the protection of the public and the statutory notice should be given in every case. However, there is nothing in the statute to indicate that if the notice is not given an otherwise valid sale would be rendered void. Since the failure to give the notice does not render the sale void, the purchaser may secure a good title at the sale. However when the purchaser applies to the Department for the issuance of a title to the vehicles which he has bought, the Department at that time would be authorized in refusing to issue title until it secures evidence that the sale of the vehicle was a bona fide transaction. In other words, the Department may satisfy itself as to the good faith of the transaction either after receiving the statutory notice prior to the sale, or, if the sale is had without notice, after the sale and before issuing title to the purchaser.

In my opinion this is the only reasonable construction of the statute under this present wording. If failure to give notice was intended to invalidate the sale, such a provision should be expressly added to the statute by amendment.

AUTHORITY OF DEPARTMENT TO REFUSE TO ACCEPT PERSONAL CHECKS
IN PAYMENT FOR LICENSE AND REGISTRATION FEES

13 July, 1942.

You state that the Department of Motor Vehicles has found that many of the checks given to it in payment of license and registration fees by various persons are not collectible and you inquire whether the Department is authorized to require that license and registration fees be paid in cash or by certified or cashier's check or like medium which insures the collectibility of the fee due.

Taxes are payable in the existing national currency. See Consolidated Statutes Section 7977. Acceptance of payment by personal or uncertified check is a matter of administrative indulgence for the convenience of the public and if it is found that this privilege is abused to an extent that the State is losing revenue and that the administration of the Motor Vehicle laws is thereby complicated, you are clearly authorized to refuse to accept payment by personal or uncertified check and to require that payment be made by cash or its equivalent.

ROAD TAX; OPERATION OF FRANCHISE HAULERS OVER ROADS FROM
VIRGINIA INTO NORTH CAROLINA; LIABILITY FOR TAX

28 August, 1942.

I have carefully considered the question raised by the Rutherford Freight Lines Incorporated with reference to their liability for North Carolina road tax on certain operations. This taxpayer operates franchise haulers over roads from Virginia into North Carolina and out again. On some of interstate runs taxpayer will pick up at a point in North Carolina, freight for delivery at another point in North Carolina. The question to be decided is whether in hauling this freight between points in North Carolina taxpayer is engaged in an intrastate operation in which case it would be liable for full 6 per cent tax on the gross receipts of such operation, or whether it is engaged in an interstate operation in which case it would be liable only for a 2 per cent tax, by virtue of the reciprocal agreement existing between this State and the Commonwealth of Virginia.

The question must be determined by reference to the reciprocal agreement. The privilege of paying the 2 per cent tax rather than the 6 per cent tax is granted only by that agreement.

After studying this agreement I am of the opinion that it does not contemplate that the questioned operation should be classed as interstate commerce. Paragraph 3 of the agreement specifically provides that certain motor vehicles "shall be allowed to operate in interstate commerce into and through the reciprocating state. . . ." The questioned operation clearly is not into or through the state of North Carolina.

This position is supported and confirmed by a construction of the reciprocal agreement given to Mr. W. H. Rogers, Jr., Assistant Commissioner, in a letter from the Commissioner of Motor Vehicles of Virginia, under date of August 12, 1942.

I must, therefore, advise that as to the questioned operation the Rutherford Freight Line is subject to the 6 per cent tax.

STATE HIGHWAY PATROL; INSURING STATE HIGHWAY PATROL CARS
FOR FIRE AND THEFT

10 October, 1942.

I acknowledge receipt of your letter of the 9th inst., enclosing letter from Honorable William P. Hodges, Insurance Commissioner, in which he expressed the opinion that Section 6449 to 6452, inclusive, of the Consolidated Statutes requires the Insurance Commissioner to prepare a schedule of the properties of the State and to procure policies of insurance thereon, which includes the insuring of State Highway Patrol cars against fire and theft.

In your letter you state that for a number of years the State Highway Patrol has been insuring its cars for fire and theft, and that you are of the opinion that the risk does not justify payment of the premium necessary to insure these cars, and you request our opinion whether or not you are required, by law, to continue to insure the same.

While I feel there is a great deal of merit in your contentions, I am of the opinion that under Sections 6449 to 6452, inclusive, of the Consolidated Statutes, the Insurance Commissioner is required to list the State Highway Patrol cars among the assets and properties of the State, and to procure policies of insurance on the same.

PENALTIES FOR VIOLATIONS OF CERTAIN MOTOR VEHICLE LAWS

23 November, 1942.

You have referred to me a letter from Corporal Thompson of the Highway Patrol, who requests that he be advised of the penalties prescribed by law for the violation of certain motor vehicle laws. His questions, and my opinion thereon, follow.

1. Q. What is the penalty for permitting an unlicensed operator to operate a motor vehicle? Is there any difference in penalty if the operator is under 16 years of age?

A. A person permitting an unlicensed operator to operate his vehicle is guilty of a misdemeanor and is punishable by a fine of not more than \$500.00 or by imprisonment for not more than 6 months. See Public Laws 1935, Chapter 52, Sections 26, 28 and 29(b), or Michie's Code, Sections 2621(175), 2621(177) and 2621(178). The penalty is the same if the operator is under 16 years of age.

2. Q. Is there any difference in penalty with respect to all convictions for driving while under the influence of intoxicating liquor after the first conviction?

A. Yes. On a first conviction, the offender shall be punished by imprisonment for not less than 30 days or more than one year, or by fine of not less than \$50.00, nor more than \$1,000.00, or by both such fine and imprisonment. On a second or subsequent conviction, he shall be punished by imprisonment for not more than two years or fined not more than \$1,000.00, or by both fine and imprisonment, in the discretion of the court. See Public Laws 1937, Chapter 407, Sections 101 and 140, of Michie's Code, Sections 2621(286) and 2621(325).

3. Q. If, after a person's license has been revoked for a conviction of driving while under the influence of intoxicating liquor, and before the expiration of the one year period of revocation, he is convicted on three different occasions of the same offense, for what period is his license revoked with respect to the last three convictions, and do the periods of revocation run consecutively?

A. Public Laws 1935, Chapter 52, Section 12(b), or Michie's Code, Section 2621(161)(b), is as follows:

"(b) The department, upon receiving a record of the conviction of any person upon a charge of operating a motor vehicle while the license of such person is suspended or revoked, shall immediately extend the period of such first suspension or revocation for an additional like period. (1935, C. 52, s. 12.)"

Thus, upon conviction of each of the three subsequent offenses, the one year is added to the existing period of revocation, so that the periods run consecutively and do not overlap.

4. Q. In the situation referred to in Paragraph 3, does a recorder have the right to revoke the offender's operator's license for the second, third, and fourth offenses for more than one year each, or is this a matter for the Department of Motor Vehicles?

A. No recorder or any other judge in the State has the authority to revoke an operator's license. The power to revoke is vested solely in the Department of Motor Vehicles. *State v. McDaniels*, 219 N. C. 763. However, a recorder or other trial judge may suspend sentence upon condition that the defendant not drive for a stated period. Such a judgment does not revoke the operator's license, but if the operator is apprehended driving while under such a sentence, the Court may, of course, proceed to deal with him as in other cases of the violation of conditions of suspended sentences.

PROCEDURE WITH RESPECT TO COMMITMENTS TO JAIL

23 November, 1942.

You have referred to me a letter from Lieutenant Jones of the Highway Patrol, who states that in Craven County, prisoners cannot be placed in the county jail without a commitment from a magistrate; that in many instances arrests are made when a magistrate cannot be reached and it is thus impossible to secure a commitment by application to a magistrate; and that the members of the Highway Patrol have not participated in the local practice of committing prisoners to jail by completing commitments which have been signed in blank by magistrates and left at the jail for this purpose. You inquire concerning the procedure which should be followed by members of the Patrol in securing the commitment to jail of prisoners arrested when a magistrate cannot be reached.

Section 4598 of the Consolidated Statutes is as follows:

"Sec. 4598. *Commitment to county jail.*—All persons committed to prison before conviction shall be committed to the jail of the county in which the examination is had, or to that of the county in which the offense is charged to have been committed: Provided, if the jails of these counties are unsafe, or injurious

to the health of prisoners, the committing magistrate may commit to the jail of any other convenient county. And every sheriff or jailer to whose jail any person shall be committed by any court or magistrate of competent jurisdiction shall receive such prisoner and give a receipt for him, and be bound for his safe-keeping as prescribed by law. (Rev., s. 3231; Code, s. 1164; 1868-9, c. 178, subc. 2, s. 33.)"

Section 4597 of the Consolidated Statutes prescribes the information which a commitment must contain. Among other things, the commitment must state the following:

"4. The manner in which he may be discharged; if upon giving recognizance or bail, the amount of the recognizance, the condition on the performance of which it shall be discharged, and the persons or magistrate before whom the bail may justify."

"5. The court before which the prisoner shall be sent for trial."

Obviously, the issuance of a commitment is a judicial act which cannot be delegated. I am of the opinion that the practice of committing prisoners on commitments completed by the officers after having been signed in blank by a magistrate without an examination of the prisoner is clearly unlawful and subject to great abuse.

Needless to say, the patrolman should take the prisoner before a magistrate at the earliest possible time in order to have a warrant issued, if the person has been arrested without a warrant, or to have bail set or the person committed to prison, if he was arrested with a warrant. But you inquire concerning the situation where the arrest is made late at night, or under circumstances that make it impossible to take the prisoner before a magistrate for several hours.

With regard to this situation, it is stated in *State v. Freeman*, 86 N. C. 685, at 686, that if a prisoner "is arrested at a time and under such circumstances as he cannot be carried immediately before a justice, the officer may keep him in custody, commit him to jail or the lock-up, or even tie him, according to the nature of the offense and the necessity of the case." The Court in the *Freeman* case also said:

"While it is the duty of a peace officer when he apprehends an offender, whether with a warrant or without one, upon view, as in this case, to carry him at once before a justice or other tribunal having jurisdiction, the law is not unreasonable, and does not require that he should do so at a late and unseasonable hour of the night, but should do so at an early hour the next morning. That was done in this case. And we are of the opinion the officer did what it was lawful for him to do under the circumstances. The prosecutor was too much intoxicated to be tried, and it was too late for a trial if he had been sober. He carried him to the lock-up and made him as comfortable as the circumstances would admit, and the next morning at 7 o'clock carried him before the magistrate of police."

I am of the opinion that members of the Highway Patrol arresting a person under circumstances that make it possible for the prisoner to be taken immediately before a magistrate may confine such person in jail until the earliest time at which he can be taken before a magistrate for appropriate proceedings. However, this power exists and

must be exercised only in cases of clear necessity, and within the limits indicated, and caution should be taken that it is not abused. This type of commitment is of temporary efficacy and requires no written order as in the case of a formal commitment by a magistrate.

OPERATOR'S LICENSE; LEGALITY OF OPERATION OF ROAD GRADERS BY
PERSONS WHOSE OPERATOR'S LICENSES HAVE BEEN REVOKED

7 January, 1943.

You inquire whether a person whose operator's license have been duly revoked may legally operate motor graders for the purposes of maintaining and repairing the highways.

Public Laws 1935, Chapter 52, Section 3 (N. C. Code, Section 2621(152)), provides in part as follows:

"The following are exempt from license hereunder:

* * * * *

"(b) Any person while driving or operating any road machine, farm tractor, or implement of husbandry temporarily operated or moved on a highway; . . . "

I am of the opinion that by virtue of this statute no operator's license is required for the operation of a motor grader upon the highways of the State in the course of road maintenance.

VALIDITY OF REGISTRATION OF TITLE OF AN AUTOMOBILE IN THE NAME
OF HUSBAND AND WIFE JOINTLY WITH RIGHT OF SURVIVORSHIP

16 February, 1943.

You have requested my opinion as to whether the Department of Motor Vehicles should issue certificates of title to husband and wife jointly, "with right of survivorship."

It is well settled that an estate by the entirety in personal property with the incident of survivorship is not recognized in North Carolina. *Turlington v. Lucas*, 186 N. C. 283; *Winchester v. Cutler*, 194 N. C. 698. Further, the right of survivorship in joint tenancies, with an exception as to partners, is expressly abolished by statute. C. S. 1735.

However, the Supreme Court in *Jones v. Waldroup*, 217 N. C. 187, speaking of Section 1735, has stated that "this statute abolished survivorship only where it follows as a legal incident to an existing joint tenancy. It did not, and does not, prevent persons from making agreements as to personalty such as to make the future rights of the parties depend upon the fact of survivorship. *Taylor v. Smith*, 116 N. C. 531, 535, 21 S. E. 202. Since there is nothing in public policy to prevent it, the right should be upheld."

Applying these principles it seems clear that one spouse can by proper conveyance, validly convey title to an automobile to himself or herself and the other spouse, or the survivor of them. By such a conveyance the future rights of the parties would by agreement depend upon the fact of survivorship.

Before the Commissioner of Motor Vehicles issues a title to a husband and wife with right of survivorship, I am of the opinion that he should require clear evidence that such an agreement or con-

veyance has been made by or between the husband and wife. I would therefore suggest that in all cases where a registration is applied for in the name of a husband and wife with the right of survivorship, the Commissioner should require that the person in whose name the title is registered, or the applicant for a new title, execute and file with the Department a conveyance of title in the following form:

"For value received I hereby transfer and convey to.....
 and
 or the survivor of them, all my right, title, and interest in and
 to the following described motor vehicle, of which I am at present
 the legal owner:.....
"

"I hereby request the Commissioner of Motor Vehicles of the
 State of North Carolina to issue a certificate of title on such motor
 vehicle in the form set out above.

"This.....day of....., 19.....

Witness:

..... (Seal)

....."

MOTOR VEHICLES; ISSUANCE OF CERTIFICATE OF TITLE WHERE OWNER REPORTED MISSING IN ACTION IN WAR

1 March, 1943.

You have referred to me a letter of Mr. Bonner D. Sawyer dated 22 January, 1943, and request my opinion upon the question therein raised. Mr. Sawyer states that a resident of this State who owned an automobile joined the Merchant Marine and was reported as missing after his ship was torpedoed; that a marine insurance company has paid insurance on his life; that if he is dead, his sole distributee is his father; that the father desires to sell the automobile; but that the Clerk of Superior Court refuses to appoint an administrator on the ground that the father cannot say with certainty that the son is dead. Mr. Sawyer inquires concerning the proper procedure for a transfer of title of the automobile.

Public Laws 1937, c. 407, s. 41 (Sec. 2621(227) of Michie's N. C. Code of 1939) provides for the procedure to be followed in transferring certificates of title of a motor vehicle where the title to said motor vehicle has passed from the owner to another by operation of law. The applicable provisions are as follows:

"(b) In the event of transfer as upon inheritance, devise or bequest, the department shall, upon receipt of a certified copy of a will, letters of administration and/or a certificate from the clerk of the superior court showing that the motor vehicle registered in the name of the decedent owner has been assigned to his widow as part of her year's support, transfer both title and license as otherwise provided for transfers. *However, if no administrator has qualified or the clerk of the superior court refuses to issue a certificate, the department may upon affidavit showing satisfactory reasons therefor effect such transfer, but the new title so issued shall not affect the validity nor be in prejudice of any creditor's lien.*" (Italics added.)

I am of the opinion that this statute authorizes you to effect a transfer of the certificate of title upon affidavits "showing satisfactory reasons therefor," even if the Clerk of the Superior Court has not issued letters of administration. However, such a transfer should not be made except upon proper evidence that it is justified. In the case under consideration, you would, I think, be justified in transferring title if you were satisfied of the following facts by affidavit or otherwise:

- (1) That the owner is dead.
- (2) That he left no will.
- (3) That a personal representative has not been appointed.
- (4) That he left surviving him no brothers, sisters, mother, wife, or children, and that thus his father is his sole distributee.

(If the father is the sole distributee, he is by law entitled to receive the personal property of his son. See Sec. 137(6) of Michie's 1939 N. C. Code.)

MOTOR VEHICLE LAWS; ROAD TAXES; GOVERNMENT SERVICES

9 April, 1943.

You have requested my opinion upon the following matter.

You state that the Export Tobacco Company has purchased for the Commodity Credit Corporation a quantity of tobacco which was stored in the Hiden Storage and Forwarding Company, Newport News, Virginia. In order to secure additional warehouse space the Federal Government notified the Hiden Storage and Forwarding Company to vacate this property. The Hiden Storage and Forwarding Company in turn notified the Export Tobacco Company to have the tobacco moved to some other place at government expense. The Export Tobacco Company contracted with the Vance Trucking Company to do the necessary hauling. The Vance Trucking Company was paid for its services by the Export Tobacco Company, which was reimbursed by the government. The Vance Trucking Company received the published rates for its services and now contends that it may exclude from gross revenue for purposes of computing the motor vehicle franchise tax due to the State of North Carolina the revenue earned from this employment on the ground that it falls within the provisions of Public Laws 1937, C. 407, s. 53, which is in part as follows:

"In computing the gross revenue of franchise bus carriers and franchise haulers, revenue derived from the transportation of United States mail or other United States government services shall not be included."

You inquire whether in my opinion the Vance Trucking Company is entitled to an exemption on the ground that it was performing government service within the meaning of the quoted statute.

I am of the opinion that the Vance Trucking Company was not performing a government service within the meaning of the statute. The contract of the Vance Trucking Company was not with the government but with the Export Tobacco Company. It was with the Export Tobacco Company alone that the Vance Trucking Company was

dealing. In so far as the Vance Trucking Company was concerned the service was performed for the Export Tobacco Company.

The statute has never been given as broad a construction as that contended for by the Vance Trucking Company and in my opinion was never intended to be so far-reaching. It is a well established principle of law that exemptions from taxation are strictly construed against a taxpayer who is otherwise within the purview of the taxing statute. *McCanless Motor Co. v. Maxwell*, 210 N. C. 725; *Benson v. Johnston County*, 209 N. C. 751; *Stedman v. Winston-Salem*, 204 N. C. 203.

MOTOR VEHICLES; JURISDICTION OF SUPERIOR COURT TO SENTENCE TO
JAIL PERSONS BETWEEN AGES OF 15 AND 16; INTERPRETATION
OF S. B. 361 ENACTED BY 1943 LEGISLATURE

23 April, 1943.

You request my opinion upon the question whether S. B. 361, entitled "AN ACT TO EXCLUDE FROM JUVENILE COURTS AND DOMESTIC RELATIONS COURTS JURISDICTION OVER VIOLATIONS OF THE MOTOR VEHICLE LAWS BY PERSONS OVER FIFTEEN YEARS OF AGE," which was enacted by the General Assembly of 1943, authorizes the court to sentence to jail any person over 15 years of age but under 16 years of age who has been convicted of violating the motor vehicle laws.

Section 1 of the bill is as follows:

"Section 1. No juvenile court or domestic relations court of this State shall have jurisdiction over any offense involving violation of any of the motor vehicle laws or of any of the laws relating to the operation of motor vehicles on the highways of this State when such offense has been committed by a person over fifteen years of age. Any such offense shall be within the jurisdiction of the court or courts which would have jurisdiction if the offender were over sixteen years of age."

Except as otherwise provided, jurisdiction of offenders under the age of 16 years is vested in the juvenile court as a separate branch of the Superior Court. See Section 5039 et seq., *Michie's 1939 N. C. Code*; *State v. Burnet*, 179 N. C. 735, *State v. Coble*, 181 N. C. 554.

The General Assembly of 1943 enacted a statute lowering the age limit for the operation of a motor vehicle (with certain restrictions) from 16 to 15 years. The Act to which you refer was no doubt enacted as a result of the lowering of the age limit for the operation of a motor vehicle and was intended as a modification of or exception to the juvenile court statutes.

It is my opinion that the intent of this statute is to place persons under 16 and over 15 years of age, who have been convicted of a violation of any of the motor vehicle laws, upon the same basis, in all respects, including sentence or punishment, as persons over the age of 16 years; and consequently that the court would have the authority to sentence such persons to jail if such a punishment is prescribed for the offense for which the person was convicted.

MOTOR VEHICLE LAW; PENALTIES

7 June, 1943.

You inquire whether the penalties set forth in Sections 50 and 60 of the Motor Vehicle Act (Chapter 407 of the Public Laws of 1937) for driving a "for hire" vehicle without proper license and for overloading are due in addition to the penalties prescribed in Section 137, which are imposed when a person, firm or corporation is found guilty of the violation of the provisions of the Act.

Section 50 of the Act provides that any person, firm, or corporation engaged in the business of transporting persons or property for compensation, with certain exceptions, shall secure "for hire" license plates and pay the prescribed fees therefor. It further stipulates that any person, firm, or corporation operating vehicles for hire without having secured the proper license shall be liable for an additional tax of \$25.00 for each vehicle in addition to the fees required in the Act for such vehicles.

Section 137 makes it unlawful to violate any of the provisions of the Motor Vehicle Act, and constitutes such violation either a misdemeanor or a felony, depending upon the nature of the offense, and then states that unless another penalty is in this article or by the laws of this State provided, every person convicted of a misdemeanor thereunder shall be punished by a fine of not more than \$100.00 or by imprisonment for not more than 60 days, or by both such fine and imprisonment.

Construing these two sections of the Motor Vehicle Act, I am of the opinion that a person, firm, or corporation found guilty of willfully engaging in a "for hire" business without paying the proper license fee is guilty of a misdemeanor and subject to the penalties prescribed in Section 137, as well as to the additional tax of \$25.00 prescribed in Section 50. It is noted that Section 137 states that the penalties imposed there are applicable "unless another penalty is in this article or by the laws of this State provided . . .," and it might be argued that the \$25.00 additional tax imposed in Section 50 is "another penalty" within the meaning of said Section 137, and that therefore the penalty prescribed in Section 137 is inapplicable. However, I am of the opinion that the additional tax of \$25.00 imposed in Section 50 is not the type of criminal penalty or fine as is contemplated in Section 137. It is a tax levied for the overloading, and is collectible whether the overloading was done willfully in violation of the statute, or accidentally and without intent to violate the law.

Section 60 of the Motor Vehicle Act provides: ". . . It is the intent of this section that every owner of a motor vehicle shall procure license in advance to cover any overload which may be carried. Any owner failing to do so, and whose vehicle shall be found in operation on the highways carrying an overload in excess of one ton over the weight for which such vehicle is licensed, shall pay in addition to the normal tax levied in this article an additional tax of three dollars (\$3.00) per each thousand pounds in excess of the licensed weight of such vehicle. *Any person who shall willfully violate the provisions*

of this section shall be guilty of a misdemeanor in addition to being liable for the additional tax herein prescribed." (Italics added.)

The italic sentence above was added by Subsection (j) of H. B. 619, enacted by the 1943 Session of the General Assembly. In my opinion, it clearly indicates that a person, firm or corporation convicted of the willful violation of Section 60, is subject to the punishment prescribed in Section 137 as well as the additional tax of \$3.00 per thousand pounds in excess of the licensed weight.

MOTOR VEHICLES; WHAT CONSTITUTES COMMERCE UNDER RECIPROCAL AGREEMENT WITH VIRGINIA

16 June, 1943.

The Rutherford Motor Lines, Inc., operates franchise haulers over roads from Virginia into North Carolina and out again. On some of these runs the Rutherford Motor Lines, Inc., hereafter referred to as the taxpayer, picks up at a point in North Carolina freight destined for a point outside of North Carolina and delivers said freight to a connecting carrier at a point in North Carolina. During the year 1942 the taxpayer contended that it was liable to the State of North Carolina only for a tax of 2 per cent on the gross receipts of such operations in view of the reciprocal agreement existing between this State and the Commonwealth of Virginia. You requested my opinion upon that contention and I advised you on 28 August, 1942, that in my opinion taxpayer was liable on account of such operation for the full 6 per cent tax provided for by Public Laws 1937, c. 407, s. 52, as amended. (See Section 2621(238) of Michie's 1939 N. C. Code.)

Taxpayer, through its counsel, Mr. Leonard R. Hall, recently requested a reconsideration of this opinion and you have asked me to give you my further views upon the questions which the taxpayer has raised, both in his brief and in his oral argument.

It is my understanding that taxpayer agrees that the question of whether the 6 per cent tax or the 2 per cent tax is due must be determined by a construction of the reciprocal agreement between North Carolina and Virginia. The privilege of paying the 2 per cent tax rather than the 6 per cent tax is granted only by that agreement and it therefore becomes necessary to analyze that agreement in order to determine when this privilege is available.

The contentions of the taxpayer and my opinion thereon are as follows:

- (1) Taxpayer contends that the reciprocal agreement between Virginia and North Carolina dated 22 December, 1938, applies only to license tags and does not apply to the road tax. In support of this contention, taxpayer encloses a letter from the Commissioner of Motor Vehicles of Virginia stating that the files of his office disclosed a memorandum dated 16 November, 1938, and made by Mr. S. W. Shelton, then Assistant Attorney General of Virginia, which reads as follows:

"Honorable R. R. McLaughlin this date called Mr. Shelton and stated that in settlement of the controversy concerning the payment by Virginia carriers operating in North Carolina of the North Carolina 6 per cent gross receipt tax, in so far as Virginia

carriers were concerned only 2 per cent would be charged by North Carolina. Mr. McLaughlin further stated that the conclusion had been reached that his office had the authority to do this under their statute granting his office the right to conclude reciprocal agreements."

Taxpayer contends that the agreement as to the gross receipts tax levied by Public Laws 1937, c. 407, s. 52, as amended, was a separate and independent agreement from the formal reciprocal agreement entered into between the two states on 22 December, 1938, and that therefore the formal agreement has no application in determining a question of the gross receipts or road tax. This contention requires an analysis of the memorandum referred to and also of the formal reciprocal agreement of 22 December, 1938.

I have carefully studied the formal agreement and also the memorandum referred to and it seems to me that the memorandum, instead of being a separate and independent agreement, was merely evidence of a general understanding between the two states as to the rate of tax, and that the formal reciprocal agreement contained the elaborated details of the agreement. Evidently Mr. McLaughlin and Mr. Shelton agreed by telephone on the general proposition of a 2 per cent reciprocal rate. This conversation was held on 16 November, 1938. A little over a month later—on 22 December, 1938—the formal reciprocal agreement between the two states was entered into. The effective date of the formal agreement was 1 January, 1939. I have studied the reciprocal agreement with a view to determining whether it is, as taxpayer contends, limited to reciprocity as to license tags and I am unable to find any such limitation. On the contrary, the formal reciprocal agreement itself contradicts taxpayer's contention that it does not apply to the road tax. Paragraph 3(b) is as follows:

"The privilege extended by this section shall also be subject to forthwith revocation, as to the particular operation, in the event that such operator shall fail to pay to the proper official of the reciprocating state, within thirty days of the due date, *all mileage tax, road tax or gross receipt tax lawfully and correctly assessed against him.*" (Italics added.)

I am, therefore, unable to agree with taxpayer that the formal reciprocal agreement does not extend to the gross receipts tax. The Department of Motor Vehicles of this State has never so construed it and I do not see anything in Mr. Joyner's letter of April 14, 1943, to Mr. Hall which indicates that Virginia does not regard the formal agreement as embracing the gross receipts tax as well as the flat license tag or registration fees.

(2) If, as I conclude, the formal reciprocal agreement of 22 December, 1938, applies to the road tax, the question then arises whether said agreement has the effect of extending to the taxpayer on the operations in question the privilege of the 2 per cent tax rate.

The agreement deals in paragraphs 2 and 3 with motor vehicles of the type which taxpayer operates. Paragraph 9 of the agreement provides that "the privileges extended by Sections 2 and 3 of this

agreement shall apply only to vehicles transporting loads either originating in or consigned to some point within the State of their registration."

These two provisions, without further evidence, would seem to control the question under consideration and to require the conclusion that the taxpayer is subject to the 6 per cent tax on the questioned operations. However, taxpayer contends that Section 9 of the reciprocal agreement, quoted above, has not been followed by Virginia and North Carolina. Mr. Joyner, in his letter of 14 April, 1943, to Mr. Hall, states that "I know Virginia did not follow the terms of this section and I do not believe that North Carolina has." I have investigated the compliance with Section 9 by North Carolina and I am informed by the Commissioner of Motor Vehicles that Section 9 has not been complied with by North Carolina. The situation seems to be that Section 9 has in practice been ignored by both states and in view of this fact I agree with taxpayer that the provision should not now be invoked against it when it has not uniformly been applied to others. Therefore, Section 9 of the agreement cannot be considered in the decision of the question.

Section 3, Subsection c, of the reciprocal agreement is as follows:

"c. The privileges extended by this section and by section 2 of this agreement embrace only carriers while operating in interstate commerce and confer no intrastate rights whatsoever."

The taxpayer contends that its operations, referred to above, constitute interstate commerce, and in support of this position cites authorities for the proposition that in determining whether commerce is interstate or intrastate, the controlling factor is the movement of the freight. The Commissioner of Motor Vehicles, on the contrary, contends that the controlling factor is the movement of the loaded vehicle, regardless of the ultimate destination of the freight.

Since the agreement itself does not define what is interstate and intrastate commerce within the meaning of the agreement the definition of those terms must be sought elsewhere.

As stated in 11 American Jur., p. 60:

"In the determination of whether a transportation of persons or property constitutes interstate or intrastate commerce, the essential character or unity of the movement is the decisive feature."

There can be no question but that generally speaking the nature of the commerce is determined not by the movement of the vehicle but by the movement of the property, which is the subject of the "commerce."

"A carrier, though operating a line wholly within a state, is engaged in interstate commerce when it forms a link in a continuous transportation from one state to another (cases cited); and when the ultimate destination is some point in another state, to be reached on a continuous journey, a shipment from one point to another within the same state is interstate commerce." 11 Am. Jur. p. 59.

While it is true that there are decisions which hold that there may be movement of property within the State which does not constitute interstate commerce even though the goods come from, or are destined for, another state (see *Diamond Match Co. v. Ontonagon*, 188 U. S. 82; *Arkadelphia Milk Co. v. St. Louis Southwestern Railroad Co.*, 249 U. S. 134), these decisions are based upon the fact that it was not within the contemplation of the shipper when he made the original shipment that the transportation should be to a point outside the State. As stated in 11 Am. Jur. Section 65, there is interstate commerce if "the shipper, when he made the original shipment, intended or had within his contemplation transportation to a point outside the state if the local transportation preceded the interstate or foreign traffic. . . ." It is assumed in the situation under consideration such an intent is clearly present.

The following decisions illustrate certain general principles applicable to the problem under consideration:

1. A shipment of beer received in St. Louis by Carrier A, to be delivered at Leadville, Colorado, and delivered by Carrier A to Carrier B at Pueblo, Colorado, as an independent shipment originating at Pueblo, and forwarded from Pueblo to Leadville as an intrastate shipment on a local way-bill, constituted interstate commerce subject to the jurisdiction of the I.C.C. *Baer Bros. Mercantile Co. v. Denver & Rio Grande Railroad Co.*, 233 U. S. 479.

2. A carload of grain shipped from Yanka, Nebraska, consigned to Topeka, Kansas, with a direction to notify, "care of Santa Fe for shipment" a grain company in Kansas City, Missouri, is deemed to have moved in a continuous interstate shipment from Yanka to the termination of the transit over the Santa Fe Railroad from Topeka, Kansas, to Elk Falls, Kansas, under an exchange bill of lading which the grain company had obtained at Kansas City. The delivery of the car to the Santa Fe at Topeka for further movement was not a new and distinct shipment in intrastate commerce. *Atchison, Topeka & Santa Fe Railroad Co. v. J. R. Harold*, 241 U. S. 371.

3. "A shipment from one point to another within the same state is interstate commerce, although a bill of lading is given which provides that liability shall cease upon delivery to a connecting line at a point within the state, and charges are collected to the latter point only, where the destination of the property is in a foreign state, to which a continuous voyage is contemplated, with only a stop to change cars at the terminal point mentioned in the bill of lading." *Houston Direct Nav. Co. v. Insurance Co. of N. A.*, 89 Tex. 1, 30 L.R.A. 713.

4. "If the original intention when making the shipment was to make a point in another state the final destination, and such purpose is not abandoned, transportation in pursuance of such intention between two points in such other state is interstate, although this local transportation was not under a through bill of lading." *Gulf, C. & S. F. R. Co. v. Fort Grain Co.*, 72 S. W. 419, 73 S. W. 845.

5. "The fact that transportation is initiated or completed under a local bill of lading which is wholly intrastate does not affect the nature of a shipment as intrastate commerce or otherwise." *United States v. Erie R. Co.*, 280 U. S. 98.

An annotation in 51 L. ed. 540 reaches the following conclusion:

"An agency in transportation operating entirely within the limits of a state may nevertheless be engaged in interstate or foreign commerce. (Cases cited.) Limitations on the liability of the carriers to their own lines do not prevent transportation between interstate points from being interstate or foreign commerce, where the goods are being transported under a through rate. (Cases cited.)"

These and other authorities establish as a general proposition that when a carrier picks up goods in North Carolina directed to an out-of-state point, and transfers said goods to another carrier at a point in North Carolina for further shipment, both carriers are engaged in interstate commerce. It remains to inquire whether there exists any factor which would indicate that the term "interstate commerce" and the term "intrastate rights" as used in Section 3, Subsection c, of the reciprocal agreement were used in any other sense than that generally attributed to said terms under the authorities referred to.

In construing an agreement or contract, the ultimate quest is the intention of the contracting parties. It is contended by the Commissioner of Motor Vehicles that the usage in this State of the terms "interstate commerce" and "intrastate commerce" by the persons charged with the administration of the motor vehicle laws has been different from the general usage of those terms, and that in the Department of Motor Vehicles the administrative practice has been to determine the nature of the commerce by the movement of the loaded vehicle rather than by the movement of the freight. That is to say, if a vehicle and its load start at a point in North Carolina and end at a point in North Carolina, the movement is considered intrastate regardless of the ultimate destination of the load. Apparently Virginia adheres to the customary definitions of the terms "interstate commerce" and "intrastate commerce" and I understand that there is some disagreement between the Motor Vehicle Departments of the two States as to what was intended by these terms.

Upon the face of the reciprocal agreement there is nothing to indicate that the terms "interstate commerce" and "intrastate rights" were not used in the generally accepted meaning of movement of the freight. However, the fact remains that the Commissioner of Motor Vehicles has construed the reciprocal agreement as not granting the 2 per cent rate to carriers who pick up freight at one point in North Carolina and carry it to another point in North Carolina, even if the freight is on its way to an out-of-state destination. This practice may reasonably be considered in seeking the proper construction of the agreement in view of the fact that the practice has been followed by one of the contracting parties and has not been objected to by the other, and has thus crystalized into a definite interpretation of the agreement by the State of North Carolina. In construing a statute the administrative practice is entitled to weight. *Cannon v. Maxwell*, 205 N. C. 420. I am of the opinion that by analogy a similar weight is to be given the administrative construction in construing a reciprocal agreement.

The taxpayer, through its able counsel, has presented a forceful argument in support of its position; and in the absence of any administrative construction of the agreement over a course of time by one of the parties thereto, the authorities cited by taxpayer might be controlling. However, they are not, in my opinion, sufficient to require the Commissioner of Motor Vehicles to deviate from his well settled interpretation of the agreement, which, in view of its long standing and continuity, is perhaps the best available evidence of the intent of the State in entering into the agreement. I therefore conclude that the taxpayer's questioned operations are subject to the 6 per cent, rather than the 2 per cent, rate.

If the reciprocal agreement is to be continued, I would advise that it be clarified as soon as possible. However, I should like to point out that I do not now have under consideration the question of the power of the Commissioner of Motor Vehicles to enter into reciprocal agreements with other states which have the effect of reducing the amount of the road tax below the 6 per cent rate and this letter is not to be construed as affirming the validity of such agreements.

MOTOR VEHICLE FEES; DEPOSITS BY FRANCHISE HAULERS ON
REGISTRATION FEES

17 June, 1943.

You inquire under what circumstances the Commissioner of Motor Vehicles is authorized to reduce the deposit which franchise haulers are required to make on their registration fee liability under Public Laws 1937, c. 407, s. 52, as amended (Sec. 2621(238) of Michie's 1939 N. C. Code).

The above cited statute sets forth a table of rates for the determination of the registration and licensing fees of property hauling vehicles. Subsection (e) of this statute, which was rewritten by Chapter 648 of the Session Laws of 1943, provides that franchise haulers shall pay an annual license tax according to said rate schedule for each vehicle unit and also 6 per cent of gross revenue derived from operations. The statute then provides as follows:

"Except on vehicles licensed for interstate routes and used exclusively for interstate business where more than 50 per cent of the designated route lies outside of the State of North Carolina, the required deposit may be reduced by the Commissioner to 50 per cent of the above schedule of rates as to deposits only. . . ."

In my opinion the quoted provision clearly means that franchise haulers who are doing an intrastate business are not entitled to the 50 per cent reduction in the amount of deposit.

MILITARY PERSONNEL; SURRENDER TO MILITARY AUTHORITIES
UPON DEMAND

30 June, 1943.

I received your letter of June 22, referring to our telephone conversation with reference to the surrender to the military authorities of military personnel arrested by State Highway Patrolmen.

In time of war the military authorities have the superior right to demand the custody of military personnel who may be charged with crime and under arrest by civil authorities. Upon proper demand being made by the commanding officer of any military organization of any person in the armed forces of the United States, who has been arrested for a violation of the State law, such person should be surrendered to the military authority demanding the same. The military authorities should furnish, upon making a demand, an acknowledgment of the receipt of the person so arrested, accompanied by a statement that the crime with which such person is charged will be dealt with in accordance with the military laws in force in this Country.

UNIFORM DRIVER'S LICENSE ACT; LIABILITY FOR CHAUFFEUR'S
LICENSE OF DRIVER OF LEASED TRUCK HAULING ONLY
PRODUCTS OF EMPLOYER

20 August, 1943.

You have requested my opinion upon the following matter.

A corporation leased a truck for use in the business of distributing its products. The truck was painted and marked in the same style and manner as though it had been owned by the corporation. A driver employed by the corporation which leased the truck was arrested while operating the truck upon the highways of the State for failure to have a chauffeur's license under the provisions of the Uniform Driver's License Act (Section 2621(150) et seq. of Michie's 1939 N. C. Code). At the time of the arrest the truck was being used for the sole purpose of distributing the corporation's products, and there is no evidence that it has been used by the corporation or driver for any other purpose. The truck carried "for hire" license plates. You desire my opinion upon the question whether the driver is liable for a chauffeur's license under the provisions of the Uniform Driver's License Act.

Section 2 of the Uniform Driver's License Act (Code, Section 2621 (151)), provides in part that "no person except those expressly exempted under Section 3 (Code, Section 2621(152)) shall operate a motor vehicle upon any highway in this State unless such person upon application has been licensed as an operator or chauffeur by the Department under the provisions of this Article." Violation of this Section is made a misdemeanor by Subsection (g) thereof. In determining whether a person should be licensed as an operator or as a chauffeur it is necessary to refer to Section 1 of the Act (Code, Section 2621(150)). The term "chauffeur" is there defined as follows:

" 'Chauffeur' shall mean every person who is employed for the principal purpose of operating a passenger motor vehicle, except school buses, and every person who drives any motor vehicle while in use as a public or common carrier for persons or property, and this shall apply to city delivery motor vehicles."

With respect to property hauling vehicles this definition of a "chauffeur" is confined to persons driving motor vehicles while in use as common or public carriers. The terms public carrier and common carrier are synonymous and may be defined generally "as

one who holds himself out to the public as engaged in the business of transporting persons or property from place to place, for compensation, offering his services to the public generally." 9 Am. Jur. page 430.

The officer making the arrest evidently proceeded upon the belief that since the vehicle which Mr. Martin was operating was licensed for a "for hire" operation the driver of such vehicle should possess a chauffeur's license. It was entirely proper for the truck to be licensed as a "for hire" vehicle in view of the fact that it was a leased vehicle and was thus subject to the following provision of Section 2 of the Motor Vehicle Law of 1937 (Code, Section 2621 (187)):

"Provided further, that the term 'for hire' as used therein shall include every arrangement by which the owner of a motor vehicle uses, or permits such vehicle to be used, for the transportation of the property of another for compensation, subject to the exemptions aforesaid."

It is my opinion, however, that the determinative factor in the liability of the driver for a chauffeur's license is the nature and scope of his operation of the vehicle. Since that operation was not that of a public or common carrier but was confined to the operation of the vehicle in the delivery of the products of his employer, he did not engage in activity which would render him liable for a chauffeur's license. The liability of the owners of the vehicle for "for hire" tags is one question and the liability of the driver, who was not an employee of the owners, for a chauffeur's license is an entirely different question; and the fact that the vehicle was a "for hire" vehicle would not make the driver liable for a chauffeur's license unless he was actually operating the vehicle as a public or common carrier.

This opinion may be used for the future guidance of the Division of Highway Safety and of the State Highway Patrol in similar cases.

MOTOR VEHICLES; REPORTING SALES UNDER "JUDICIAL PROCEEDINGS"

5 October, 1943.

You refer me to Section 78(c) of Chapter 407 of the Public Laws of 1937 (Section 2621(264) of Michie's 1939 N. C. Code), and request my opinion concerning the proper meaning of the phrase "or under judicial proceedings" in said statute.

This statute provides that "no motor vehicle shall be sold by any sheriff, police or peace officer, or by any person, firm or corporation claiming a mechanic's or storage lien, or under judicial proceedings, until notice shall have been given of such sale."

A sale under judicial proceedings in my opinion refers to any sale made pursuant to a court order. If there has been no court order for the sale there would have been no "judicial proceedings" within the meaning of the statute. However, it is important to note that the sales referred to in this statute are not limited to sales under judicial proceedings in view of the use of the disjunctive "or" which introduces the words "under judicial proceedings." It is, therefore, my

opinion that the statute applies to any sale made by a person claiming a mechanic's or storage lien, whether or not such sale is made under court order, and also to any sale made under court order. If a sale is made under the power of sale contained in a chattel mortgage the statute does not require that the sale be reported to the Department. However, if a chattel mortgage was foreclosed by judicial proceedings and a sale made under court order, such sale would be within the provisions of the statute and the Commissioner should be notified thereof.

DRIVER'S LICENSES; AUTHORITY OF PERSON WHOSE LICENSE HAS BEEN
REVOKED TO DRIVE T.V.A. VEHICLES ON T.V.A. PROPERTY

15 October, 1943.

You inquire whether a person who has been convicted of driving while intoxicated and whose driver's license has been, for that reason, revoked may legally operate motor vehicles owned by the Tennessee Valley Authority after revocation of license.

This office has ruled that an employee of the Tennessee Valley Authority may not be required to obtain a driver's license from the State of North Carolina on account of his operation of motor vehicles of the Tennessee Valley Authority while in the direct course of his employment for the Authority even if such operation occurs upon the highways of North Carolina. See opinion to Mr. J. Allen Glenn, dated 2 July, 1943.

Since the State may not compel such a person to procure a driver's license in the first instance, the State would have no authority to prevent a person whose State license has been revoked from driving vehicles for the Tennessee Valley Authority strictly in the course of the business of the Authority, whether on or off property belonging to the Authority.

DUTIES OF THE STATE HIGHWAY PATROLMEN

26 October, 1943.

You have requested me to outline for you the duties imposed by law or under legal authority upon the State Highway Patrolmen. Accordingly, I have outlined these duties as follows and cited the authority from which they arise. If you have any further questions regarding these duties I shall be pleased to try to answer them.

(1) *In General.* The State Highway Patrol (hereinafter referred to as the "Patrol") is subject to such orders, rules and regulations as may be adopted by the Commissioner of Motor Vehicles, with the approval of the Governor. (1933, c. 214; 1935, c. 324, s. 3; 1939, c. 387, s. 2; 1941, c. 36.)

(2) *To Patrol Highways and Enforce Highway and Motor Vehicle Laws.* The Patrol shall regularly patrol the highways of the State and enforce all laws and regulations respecting travel and the use of vehicles upon the highways, the laws regulating the registration and licensing of motor vehicles, and all laws enacted for the protection of the highways of the State. To this end, the members of the

Patrol are given the power and authority of peace officers for the service of any warrant or other process issuing from any of the Courts of the State having criminal jurisdiction. (1929, c. 218, s. 4; 1935, c. 324, s. 3; 1937, c. 407, s. 14(a).)

(3) *Powers of Arrest.* Members of the Patrol are authorized to arrest without warrant any person who, in their presence, is engaged in the violation of any of the laws of the State regulating travel, the registration and licensing of vehicles, and the use of vehicles upon the highways, or the violation of laws with respect to the protection of the highways. (1929, c. 218, s. 4; 1935, c. 324, s. 3; 1937, c. 407, s. 14.) In addition they, may at any time and without special authority, either upon their own motion or at the request of any sheriff or local police authority, arrest persons accused of highway robbery, murder or other crimes of violence. (1935, c. 324, s. 3.)

(4) *Additional Duties May be Prescribed by Governor or Commissioner of Motor Vehicles.* The Patrol has full power and authority to perform such additional duties as peace officers or otherwise as may from time to time be prescribed by the Governor. (1935, c. 324, s. 3; 1939, c. 387, s. 2.)

It is also required to perform such other and additional duties as may be required of it by the Commissioner of Motor Vehicles in connection with the work of the Department of Motor Vehicles. (1935, c. 324, s. 3; 1941, c. 36.)

(5) *To Direct Traffic.* The Patrol has power at all times to direct traffic in conformance with the law, and, in the event of a fire or other emergency or to expedite traffic or to insure safety, to direct traffic as conditions may require, notwithstanding the provisions of law. (1937, c. 407, s. 14(c).)

(6) *Powers of Inspection.* The Patrol may, upon reasonable belief that any vehicle is being operated in violation of any law regulating the registration, licensing or operation of vehicles, require a driver thereof to stop and exhibit his driver's license and registration card issued for the vehicle and submit to an inspection of the vehicle and the registration plates, registration card, and equipment of same. (1937, c. 407, s. 14(d).)

The Patrol may also inspect any vehicle, of a type required to be registered under the provisions of Chapter 407 of the Public Laws of 1937, in any public garage or repair shop or in any place where such vehicles are held for sale or wrecking, for the purpose of locating stolen vehicles and investigating the title and registration thereof. (1937, c. 407, s. 14(e).)

(7) *Powers of Investigation; Accidents; Thefts.* The Patrol has the authority to investigate traffic accidents and secure testimony of witnesses or of persons involved. (1937, c. 407, s. 14(g).)

It is also authorized to investigate reported thefts of motor vehicles, trailers and semi-trailers. (1937, c. 407, s. 14(h).)

(8) *Certification of School Bus Drivers.* Members of the Patrol may examine school bus drivers to determine whether or not they

are competent, and issue certificates to the effect that persons examined by them are fit and competent to operate or drive a school bus over the public roads of this State. (1937, c. 397.)

(9) *Administration of Oaths Under Uniform Driver's License Act.* All members of the patrol are authorized and directed to administer oaths in the administration of the Uniform Driver's License Act. No fee shall be charged by them for such service. (1935, c. 52, s. 2(b); 1943, c. 787, s. 1(b).)

(10) *Additional Powers Granted by the Governor on December 11, 1941.* Due to the war emergency and for the duration thereof, the Governor has granted general police power to the Patrol. The full text of the Governor's letter written to Mr. T. Boddie Ward, Commissioner of Motor Vehicles, on December 15, 1941, explaining these additional powers is as follows:

"In pursuance of an approving opinion by Attorney General of North Carolina and under the provisions of North Carolina Consolidated Statutes 3846(ooo) I have as of the date of December 11, 1941, declared that an emergency exists and have ordered and directed that during the existence of such emergency and for the duration thereof, the State Highway Patrol and each and every member and officer thereof, shall have general police power throughout the State of North Carolina, with full authority to make arrests upon warrant or otherwise, to the same extent that sheriffs and other law enforcement officers have under the law.

"This order so made by me is designed primarily to confer such police powers to members of the Highway Patrol with reference to matters and situations arising in connection with the emergency created by the Defense and War Program, and with particular reference to acts of sabotage, espionage, to the investigation and apprehension of enemy aliens and other suspicious characters under instructions of the Federal Bureau of Investigation or State Bureau of Investigation, and to make arrests in connection with violations of the highway laws, with particular to such violations as may impede the orderly and full use of the highways for military and other essential purposes, and, in general, to perform such acts with full police power as in the sound judgment of the members may be in the interest of the State and Nation in this emergency.

"I suggest that a copy of this communication be sent to each member of the Highway Patrol and that they be particularly instructed that this order is not designed to give them any power or instruction to encroach upon the normal duties of sheriffs, policemen and other law enforcement officers, but is only intended to cover the duties generally outlined above and particularly related to the emergency in which the state and nation are now involved. You will also enjoin upon the members the propriety of exercising these additional powers with utmost care and discretion."

MOTOR VEHICLE ROAD TAX; APPLICATION TO SHIPMENTS OF THE FEDERAL GOVERNMENT

26 October, 1943.

Mr. R. L. Askea has made certain inquiries regarding the scope of Section 53 of Chapter 407 of the Public Laws of 1939, as amended (Section 2621(239) of Michie's Code), which provides that in computing the gross revenue of franchise haulers for purposes of determin-

ing the proper road tax due the State "revenue derived from the transportation of United States mail or other United States government services shall not be included." You desire my opinion upon these inquiries, which are as follows:

1. *Question.*—If a franchise hauler transports a shipment on a bill of lading of the Federal Government and renders a statement directly to an agency of the Federal Government and is paid by a check of the Federal Government, is the revenue derived from such shipment to be included within gross revenue for purposes of computing the road tax?

Answer.—Since the Federal Government would have no authority to issue its checks in payment of transportation services unless said services were performed for governmental purposes, it is my opinion that such revenue should be excluded from the tax base under the statutory provision referred to above.

2. *Question.*—If the Commodity Credit Corporation, an agency of the Federal Government, contracts with the "A" company for the purchase of tobacco, and the tobacco is transported by a franchise hauler on a bill of lading from "Commodity Credit Corporation, c/o 'A' Company," to "Commodity Credit Corporation, c/o 'A' Company," at another location, and the hauler sends a statement for the transportation charges to the "A" Company, which in turn bills the Federal Government for both the price of the tobacco and the transportation charges, is the revenue derived by the hauler from this transportation includible in the tax base?

Answer.—In my opinion this question cannot be definitely answered without the assumption of further facts. If the "A" Company has been designated as an agent of the Commodity Credit Corporation for the purchase and handling of the tobacco, the transportation would be a service of the Federal Government and the revenue therefrom exempt from tax. However, if "A" Company is not the agent of the Commodity Credit Corporation, but is an independent contractor which has agreed to sell to Commodity Credit Corporation certain tobacco, title to the tobacco not passing to the Commodity Credit Corporation until the transportation is completed, the exemption would not be available.

This conclusion is supported by analogy by a decision of the United States Supreme Court dealing with the application of State sales and use taxes to sales to and purchases by contractors with the Federal Government. *Alabama v. King & Boozer*, 314 U. S. 1. This decision points out that State taxes may be levied upon sales to and purchases by contractors with the Federal Government where such contractors are not the agents of the Federal Government but are independent purchasers. In determining whether the contractor is an agent or an independent purchaser under the taxing statute involved in that case, the Court stated that the test is whether the Federal Government became obligated to pay for the purchases of personal property; if so, the contractor was merely an agent; if not, the contractor was the purchaser and sales and use taxes could be validly levied on sales to and purchases by such contractors. In the *King & Boozer* case the contractor was reimbursed by the Federal Government for the cost of all property purchased under the contract, just as in the situation under consideration the "A" Company is reimbursed by the Commodity Credit Corporation. However, the Supreme Court held that the contractor was an independent purchaser and was not an agent of the Federal Government. While this decision dealt with the sales

and use taxes, it is authority in considering whether or not services furnished by the contractor or purchaser are to be considered government services.

If the title to the tobacco becomes vested in the Commodity Credit Corporation before the transportation in question takes place, it is my opinion that revenue from the shipment is entitled to exemption from tax. However, if the shipment in question is completed before title ever vests in the Commodity Credit Corporation, it is my opinion that the "A" Company is not acting as the agent for the Commodity Credit Corporation but as an independent contractor and the mere fact of reimbursement does not render the service a government service entitled to exemption. Thus, it may be seen that the second question cannot be definitely answered until the exact contract between the "A" Company and the Commodity Credit Corporation is examined. If this agreement is presented to the Commissioner of Motor Vehicles I may then definitely rule upon its legal effect with reference to the shipments in question.

STATE HIGHWAY PATROL; AUTHORITY OF PATROLMEN TO MAKE
ARRESTS IN ATHLETIC STADIUMS

8 November, 1943.

You inquire whether in my opinion members of the State Highway Patrol are authorized by law to arrest without a warrant persons committing, in their presence, a breach of the peace inside an athletic stadium while an athletic event is in progress.

I have been unable to find any statute which specifically gives patrolmen such authority. The statutes relating to the State Highway Patrolmen confine the authority of patrolmen to arrest without a warrant to violations of the laws regulating travel on the highways or relating to the protection of the highways or to "highway robbery, bank robbery, murders, or other crimes of violence." In my opinion a minor breach of the peace such as a fist fight or the usual disturbances of an intoxicated person may not properly be classed as "crimes of violence."

It is true that C. S. 4542 provides that "every person present at any riot, rout, affray or other breach of the peace, shall endeavor to suppress and prevent the same and if necessary for that purpose, shall arrest the offenders." However, a patrolman arresting under the authority of this statute would be arresting not by virtue of authority as an officer, and if he were injured in making such arrest it is my opinion that he would not be entitled to compensation for injuries received since such injuries would not have arisen out of and in the course of his employment as an officer.

Public Laws 1935, c. 324, s. 3, as amended by Public Laws 1939, c. 387, s. 2 (Michie's Code, Section 3846(ooo)), contains the following provision:

"The State Highway Patrol or any member or members thereof shall have full power and authority to perform such additional duties as peace officers as may from time to time be directed by the Governor. . . ."

Pursuant to authority granted in this statute the Governor on 15 December, 1941 vested in the Highway Patrol "general police power throughout the State of North Carolina, with full authority to make arrests upon warrant or otherwise, to the same extent that sheriffs and other law enforcement officers have under the law." However, this authority is in subsequent portions of the order in which it is conferred, greatly restricted and related primarily to situations arising out of war conditions such as sabotage, espionage, the investigation and apprehension of enemy aliens, etc. The order specifically states that it is "not designed to give . . . any power or instruction to inchoach upon the normal duties of sheriffs, policemen and other law enforcement officers, but is only intended to cover the duties generally outlined above and particularly related to the emergency in which the state and nation are now involved." In view of this restriction of the general power given in the first paragraph of the order it is my opinion that the order was probably not intended to confer upon patrolmen the authority to make the arrests under consideration.

Needless to say, under the statute quoted above, the Governor would have the power to direct specifically that patrolmen shall, within athletic stadiums, have all the authority and powers of peace officers generally.

SUBSTITUTED SERVICE ON ASSISTANT COMMISSIONER OF MOTOR VEHICLES

8 November, 1943.

On 20 October, 1943, the Supreme Court of North Carolina handed down its decision in the case of Propst, Admr. v. Hughes Trucking Co., 223 N. C. 490. That was an action to recover damages for wrongful death resulting from a truck collision. The plaintiff attempted to serve summons on the defendant by service on the Commissioner of Motor Vehicles as agent of the defendant as permitted under statute. However, the sheriff made the following return on the summons:

"Served March 5, 1943, by delivering copy of the within summons . . . to . . . W. H. Rogers, Jr., Assistant Commissioner, Motor Vehicle Bureau of the State of North Carolina, statutory process agent of the Hughes Trucking Co., a foreign corporation."

The defendant objected to the sufficiency of this service and the Court had the following to say upon this point:

"The pertinent provision of the statute is, that service of process shall be made by leaving copy thereof with a fee of one dollar, 'in the hands of the Commissioner of Motor Vehicles, or in his office.' There is no finding on the present record that this was done, and it is not made manifest by the sheriff's return. 21 R.C.L., 1360. 'Delivering copy . . . to . . . W. H. Rogers, Jr., Assistant Commissioner of Motor Vehicle Bureau' may or may not be the same as leaving copy in the office of the Commissioner of Motor Vehicles, albeit the notice mailed by the Commissioner would seem to indicate his receipt of the summons. 23 Am. Jur., 564; Annotation: 98 A.L.R., 1437; Notes: 47 Law Ed., 987; 23 L.R.A., 499. Opportunity should be given the sheriff to make

a true and accurate return, if in fact his service was in accordance with the statute. *Lee v. Hoff*, 221 N. C. 233, 19 S. E. (2d), 858.

"The plaintiff should also file affidavit of compliance as required by the statute, if he would avoid possible future challenge to any judgment that may be rendered in the cause. *Casey v. Barker*, 219 N. C. 465, 14 S. E. (2d) 429."

Thus, while the Court gave the sheriff an opportunity to amend his return, some delay will be caused and I am calling this matter to your attention in order that you may suggest to the sheriff that service be made upon the Commissioner rather than the Assistant Commissioner. The Court seems to intimate that service upon the Assistant Commissioner might be sufficient if it was made to appear that this was the same as leaving a copy in the office of the Commissioner. However, there is some doubt about this and, in view of the fact that the statute prescribes service upon the Commissioner or by leaving a copy in his office, I suggest that you request the sheriff to make service in that form in the future.

Needless to say, this is a matter in which the parties to the law suit are more interested than the Commissioner. However, I am sure that you desire to coöperate in every way in seeing that the matter is handled to the satisfaction of all parties concerned and I have therefore called this matter to your attention.

MOTOR VEHICLES; REGISTRATION; TRANSFER OF REGISTRATION AND
LICENSE PLATES; CHAPTER 592, SESSION LAWS 1943

12 November, 1943.

You have requested my opinion as to the proper construction of Section 1 of Chapter 592 of the Session Laws of 1943.

By Section 29 of Chapter 407 of the Public Laws of 1937, registration cards and registration plates of motor vehicles expire at midnight on the 31st day of December of each year. Section 28 of this 1937 Act authorizes and directs the Department of Motor Vehicles to transfer licenses when motor vehicles are transferred. Your specific inquiry is, should the Department of Motor Vehicles transfer 1943 license plates during the month of January 1944, since the license plates may be used during that month under the 1943 Act cited above.

I am of the opinion that the effect of Section 1 of Chapter 592 of the Session Laws of 1943 is to extend the time during which license plates are valid so as to include the month of January of the succeeding year. This being true, it is my opinion that the Department of Motor Vehicles has the same authority, and is under the same duty, to transfer said plates during the month of January of the succeeding year as the Department possesses for transferring the license plates at any time during the year for which the plates were originally issued. In other words, it is my opinion that the legal effect of the 1943 law is to make the expiration date January 31 instead of December 31.

MOTOR VEHICLE ACT; NURSERY OPERATORS NOT ENTITLED TO
USE FARM PLATES ON TRUCKS

1 December, 1943.

You inquire whether persons engaged in the business of growing trees, shrubs, vines, and other similar nursery products are authorized to procure farm license plates for trucks used exclusively by them in carrying on such work.

The issuance of farm plates is authorized in Section 53(c) of Chapter 407 of the Public Laws of 1937, as amended by Chapter 227 of the Public Laws of 1941. This statute provides that the Department of Motor Vehicles "shall issue, upon application therefor, a license plate for trucks marked 'farmer,' which shall be issued upon evidence satisfactory to the Department that the applicant is a farmer and is actually engaged in the growing, raising and producing of farm products as an occupation. . . . The term 'farmer' as used in this section means any person engaged in the raising, growing and producing of farm products on a farm not less than ten acres in area, and who does not engage in the business of buying farm products for resale; and the term 'farm products' means any food crop, cattle, hogs, poultry, dairy products and other agricultural products designed and to be used for food purposes."

Since trees, shrubs, vines, etc., grown in a nursery do not constitute food products, it is my opinion that the Commissioner of Motor Vehicles has no authority to issue farm plates for trucks used in such business.

MOTOR VEHICLES; TRANSFER OF FOR HIRE LICENSE PLATES

10 December, 1943.

You inquire whether the Department of Motor Vehicles is authorized to transfer for hire license plates, which have been issued to persons operating vehicles individually or in partnership, to corporations later formed by said individuals or partnerships when a part or all of the stock of such corporations is owned by the person or group of persons to whom the license was issued.

Section 28 of the Motor Vehicle Act (1937, c. 407) provides that for hire license plates issued by the Department of Motor Vehicles shall not be assigned or transferred from one owner to another. If the stockholders of a corporation are the same persons who procured the license originally, does it follow that to transfer the license to the corporation is to transfer it from one owner to another?

In my opinion it does. A corporation is a separate entity distinct from its individual members and stockholders and is thus capable of ownership distinct and separate from that of its stockholders. As stated in 13 Am. Jur. 6:

"A corporation is for most purposes an entity distinct from its individual members or stockholders who, as natural persons, are merged in the corporate identity, and remains unchanged and unaffected in its identity by changes in its individual membership. By the very nature of a corporation, the corporate property is vested in the corporation itself and not in the stockholders. The corpora-

tion is the real though artificial person substituted for the natural persons who procured its creation and have pecuniary interests in it, in which all its property is vested, and by which it is controlled, managed, and disposed of. It must do all corporate acts in its corporate name by its regularly appointed officers and agents, whose acts are those of the corporation so far as they are within the powers and purposes of the corporation.

"The corporate entity is distinct although all its stock is owned by a single individual or corporation. Consequently, such concentration of stock ownership does not alter the fact that title to the corporate property is vested in the corporation and not in the owner of the corporate stock."

I, therefore, conclude that the Department of Motor Vehicles has no authority to transfer for hire license plates, which have been issued to individual or partnerships, to corporations later formed by such individuals or partnership, since, in contemplation of law, such a transfer would be from one owner to another.

MOTOR VEHICLES; LIABILITY OF LESSORS FOR "FOR HIRE" LICENSES

19 January, 1944.

You have requested my opinion upon the following matter.

An owner of a motor vehicle who is a resident of North Carolina leases the vehicle to another for a stipulated consideration in order that the lessee may use the vehicle in hauling his own products. The lease agreement provides that the lessor shall maintain the equipment in good repair and pay ad valorem taxes on the same; that the lessee shall pay for gasoline and oil, the driver's wages, the license tax, insurance premiums, and shall have complete control over the operation of the equipment. You inquire whether in my opinion the lessor is required by law to purchase "for hire" license plates for this vehicle, or whether the lessee can operate the vehicle on a private license.

Public Laws 1937, c. 407, s. 2(r)(1), as amended (Michie's N. C. Code, Section 2621(186)(r)(1); G. S. 20-38(r)(1)), which defines contract haulers of vehicles as "motor vehicles used for the transportation of property for hire, but not licensed as franchise hauler vehicles," further provides as follows:

"Provided further, that the term 'for hire' shall include every arrangement by which the owner of a motor vehicle uses, or permits such vehicle to be used, for the transportation of the property of another for compensation, subject to the exemptions aforesaid."

This section, in subdivision (t), defines owner as follows:

"A person who holds the legal title of a vehicle or, in the event a vehicle is subject to an agreement for conditional sale or lease thereof, with the right of purchase upon performance of the conditions stated in the agreement and with the immediate right of possession vested in the original vender or lessee. . . ."

In the agreement to which you refer there is no provision for a right to purchase the vehicle.

It is my opinion that under the definition of the term "for hire" referred to above, the lessor would be liable for a "for hire" license

for the vehicle. The lease is an arrangement by which the owner (in this case the person holding the legal title) permits the vehicle to be used by another for the transportation of property for compensation. The owner is deriving compensation from the lease of the vehicle for commercial purposes and the fact that that compensation is in the form of a stipulated rental does not in my opinion alter the basic fact that he has entered into an arrangement by which he is using the vehicle, or permitting it to be used, for compensation for the transportation of the property of another. Under these circumstances the statute requires the "for hire" licensing.

UNIFORM DRIVER'S LICENSE ACT; AUTHORITY TO SUSPEND ON DEFENDANT'S
FORFEITURE OF BAIL IN ANOTHER STATE

28 January, 1944.

You have requested my opinion upon the following matter.

A person who is a resident of North Carolina, and who holds a driver's license issued by your office, is arrested in the State of South Carolina for driving an automobile under the influence of intoxicating liquors and posts an appearance bond which is subsequently forfeited by the person's failure to appear at the trial. This matter is certified by the motor vehicle authorities of South Carolina to you pursuant to established policy. You inquire whether in my opinion you are authorized to suspend this person's North Carolina driver's license.

Section 11 of the Uniform Driver's license Act (G. S. 20-16) provides that your Department shall have authority to suspend the license of any driver upon a showing that the driver "has committed an offense in another state, which if committed in this State would be grounds for suspension or revocation." Section 18(c) of the Uniform Driver's License Act (G. S. 20-24(c)) provides that for the purposes of the Act "a forfeiture of bail or collateral deposited to secure a defendant's appearance in Court, which forfeiture has not been vacated, shall be equivalent to a conviction."

Section 17 of the Uniform Driver's License Act (G. S. 20-23) authorizes the Department "to suspend or revoke the license of any resident of this State upon receiving notice of the conviction of such person in another state of any offense therein which, if committed in this State, would be grounds for the suspension or revocation of the license of an operator or chauffeur."

Under these statutes it is my opinion that a forfeiture of bail in South Carolina was equivalent to a conviction of the crime with which the defendant was there charged; and that although under Section 17, as construed with Section 12 (G. S. 20-17), (which provides that conviction of driving while intoxicated is a ground for mandatory revocation of license), your Department would be authorized to revoke the defendant's license, the provision of Section 11 quoted above also authorizes your Department merely to suspend the defendant's license.

MOTOR VEHICLES; LICENSES REQUIRED OF LESSOR LEASING TRUCKS

9 February, 1944.

At a recent conference held between representatives of your Department, this office, and Honorable U. L. Spence, counsel for the Edgar Trucking Company, Inc., the question of the liability of the Company for "for hire" motor vehicle licenses was considered.

The facts are as follows. The Company is a domestic corporation, which owns a fleet of trucks and leases them to the Colonial Mills, Inc., a foreign corporation, doing business in North Carolina, upon an annual basis. These trucks are used by the lessee for the transportation of its products from its factory in North Carolina to points in other states. All of these operations are exclusively interstate. Under the terms of the lease the lessor agrees to keep the trucks in repair and the lessee agrees to buy licenses for the trucks, furnish drivers, and buy all motor fuel required. The rental fee is based on the total mileage covered by the trucks. The trucks have heretofore carried license tags issued by the State of New York.

The Company contends that it should not be required to procure North Carolina licenses for the reason that all operations are strictly interstate and that when the trucks are leased the lessor completely relinquishes control of their operation.

The leased vehicles fall within the classification of "contract haulers" prescribed by Public Laws 1937, c. 407, s. 2(r)(1), as amended (Michie's N. C. Code, Section 2621(186)(r)(1); G. S. 20-38(r)(1), i.e., "motor vehicles used for the transportation of property for hire, but not licensed as franchise hauler vehicles." The same statute expressly provides that the term "for hire" shall include "every arrangement by which the owner of a motor vehicle uses, or permits such vehicle to be used, for the transportation of the property of another for compensation, subject to the exemptions aforesaid."

This statute also defines owner as follows:

"A person who holds the legal title of a vehicle or, in the event a vehicle is subject to an agreement for conditional sale or lease thereof, with the right of purchase upon performance of the conditions stated in the agreement and with the immediate right of possession vested in the original vender or lessee. . . ."

In the lease agreement under consideration, it is my understanding that there is no provision for a right to purchase the vehicle.

On 19 January, 1944, this office expressed the opinion that the statutes referred to above render a lessor liable for the "for hire" licenses where he has leased his trucks under an agreement similar to that under consideration. The question of the effect, if any, of interstate operation was not considered in that opinion.

I have carefully reconsidered the conclusion reached in my opinion of 19 January, 1944, but I find no grounds upon which to change it and believe the construction of the statutes named therein to be sound. This conclusion would render the Edgar Trucking Company, Inc., liable for "for hire" licenses unless the fact that the trucks are engaged in interstate business changes the situation.

It seems to me that the essential factors in the situation are that the lessor company is a domestic corporation owning trucks which are leased under an arrangement by which said owner permits the trucks to be used for the transportation of another for compensation. In my opinion the fact that the trucks are used in interstate commerce is immaterial since the taxable privilege is the entering into an arrangement whereby the lessor derives compensation for the use of its trucks. The Edgar Trucking Company, Inc., has, through the medium of the lease, placed the trucks in commercial activity and is gaining compensation from this arrangement. The statute above seems to me to constitute this "for hire" operation which is not altered by the fact that the trucks are used on interstate runs.

I must, therefore, advise that, in my opinion, the Edgar Trucking Company, Inc., is liable for the "for hire" licenses, upon the trucks leased, under the circumstances herein discussed.

SALES OF MOTOR VEHICLES BY GARAGE KEEPERS UNDER
LIENS FOR STORAGE

24 March, 1944.

By letter of March 17, 1944, you request my opinion upon the question whether a motor vehicle may be legally sold for failure to pay storage charges and if so, the length of time for which the vehicle must be held before enforcing the lien where there is a stipulated period of storage and also where there is no stipulated period of storage.

I have been unable to find any statute in this State which specifically gives garage keepers a lien for the storage of motor vehicles.

Sections 44-28 and 44-29 of the General Statutes govern warehousemen's liens for storage but it is questionable whether these statutes apply to the storage of automobiles with garage men. These statutes give a lien to every person who furnishes storage room for "furniture, tobacco, goods, wares or merchandise." In my opinion it would require a very broad construction of this statute to bring motor vehicles within the meaning of the words "goods, wares or merchandise."

In 38 C. J. 79, there is found the following decision of this matter:

"At common law a livery-stable keeper or garage keeper has no lien for storage. However, in the case of garage keepers, a lien analogous to that of a warehouseman for storage has been recognized; and where a vehicle is left with the garage keeper strictly for the purpose of storage, without any agreement either express or implied that the owner shall have the right of continuous use of the vehicle during such period, it seems that the garage keeper may then have a warehouseman's lien thereon for his proper charges. Likewise a livery-stable keeper may have a lien on an animal left with him to be kept for a definite period. A statute conferring a lien for repairs does not confer a lien for storage charges."

Further, in 24 Am. Jur. 507, the subject is discussed as follows:

"Sec. 55. *Generally.*—No lien for storage exists at common law in favor of either a livery-stable keeper or a garage keeper. In the case of garage keepers, however, a lien analogous to that of a warehouseman has been recovered; and where a vehicle is

left with the garage keeper strictly for the purpose of storage, without any agreement that the automobile may be continuously or occasionally taken out by the owner during such period, the garage keeper may have a warehouseman's lien thereon for his charges. In many states, statutes have been enacted giving liens for storage to livery-stable keepers and to garage keepers. Liens under such statutes, however, are generally dependent upon possession and are lost by a surrender of the stored property.

"A statute creating a lien in favor of livery stable keepers is not applicable to garage keepers, nor does a statute conferring a lien for repairs give a garage keeper a lien for storage charges.

"As a general rule, liens conferred by statute upon a garage keeper for storage cannot be assigned where the assignment will necessarily constitute a breach of contract between the parties."

I have been able to find no North Carolina court decisions which answer the question. However, it is my opinion that our Court would hold that a garage keeper does have a lien for storage analogous to that of a warehouseman. Such a decision would find support in decisions of other jurisdictions (see cases cited in page from *Corpus Juris* cited above), and, of course, it is possible that the Court would construe the warehousemen's lien statute to extend to automobiles although I doubt that such a result would be reached.

If the court would construe a garage keeper's lien to come within the statute on warehousemen's liens, the procedure for the enforcement of such liens would be that outlined in G. S. 44-29. However, since it is my opinion that it is doubtful that a garage keeper's lien could be brought within warehousemen's liens statutes, it is improbable that this procedure could be followed.

G. S. 44-38 et seq. deal with the perfection and enforcement of liens generally. These statutes provide that all claims against personal property of \$200.00 and under may be filed in the office of the nearest justice of the peace or, if over \$200.00, in the office of the Superior Court Clerk in any county "where the labor has been performed or the materials furnished." It is obvious that these statutes also do not specifically apply to a lien for the furnishing of space for storage in a garage although here again the court might construe them as broad enough to apply to garage keepers' liens. These statutes provide that notice of the lien shall be filed within six months and that action to enforce the lien must be commenced within six months from the date of the filing of the notice.

It is my opinion that, if our court would recognize a garage keeper's lien, it would do so upon the basis that it is a possessory lien and would continue only so long as the garage keeper retained uninterrupted possession of the automobile on account of which the storage charges are due; and that this lien could be enforced only by bringing an action on the debt and praying the court for a judgment foreclosing the lien and ordering the car to be sold to satisfy the amount due.

You also request my opinion upon the question of the length of time which the vehicle must be held before a lien can be asserted (a) where there is a stipulated period of storage and (b) where there is no stipulated period of storage.

It must be remembered that the lien is simply a remedy provided by law for the security and enforcement of a debt. Where there is an agreement between the parties as to the length of time for which the vehicle shall be stored with the garage keeper, it is generally understood that the owner of the vehicle may pay the storage charges at the end of this period in the absence of any agreement for prepayment of the charges. In such cases, at the end of the stipulated period, if the storage charges are not paid, the garage keeper may institute action and seek a judgment of the court giving him a recovery of the debt and the right to enforce his lien by selling the car. Where there is no stipulated period of storage, in my opinion the garage keeper would be entitled to sue for the debt and ask for enforcement of the lien after having held the vehicle for a reasonable time. The question of what time is reasonable can not be answered except by the facts and circumstances of each particular case. The manner in which the car was placed in the garage keeper's possession, the instructions given him by its owner, and all other circumstances must be considered in this connection.

STATE HIGHWAY PATROL; NECESSITY OF PROCURING WARRANTS IN
CONNECTION WITH ARRESTS; AUTHORITY TO DELIVER
PRISONERS TO FEDERAL AUTHORITIES

2 May, 1944.

You have referred to this office the letter of Mr. J. A. Shaw, dated April 21, 1944, with the request that I give you my opinion upon the question whether the conduct of the patrolman mentioned by Mr. Shaw complied with requirements of the law. The facts as stated in this letter are those revealed in Mr. Shaw's letter and also in a conference held between you and the patrolman on April 29, 1944.

On April 17, 1944, the patrolman arrested Joe Adams for having in his possession a quantity of non-tax paid liquor for the purposes of sale, and D. L. Maynard for transporting non-tax paid liquor upon the highways and for having in his possession non-tax paid liquor for sale. After the arrests were made, the patrolman requested the Clerk of the Recorder's Court having jurisdiction to issue warrants based upon these charges. The warrants were issued by the Clerk and left on a desk customarily used by the patrolman in order that the patrolman might sign them as prosecuting witnesses. The warrants were never signed by the patrolman and never served upon the prisoners. Adams was placed in jail and remained in jail until the following day, April 18, when he was released upon giving bond. Maynard was not placed in jail but was allowed to give bond immediately. The date for trial of both prisoners was set upon their giving bonds.

On April 19, 1944, the patrolman informed the Solicitor of the Recorder's Court that he was going to turn the prisoners over to the Federal authorities. A Federal agent later told the Solicitor that the Federal Government was going to take possession of the automobile and that the case would be handled in the Federal Court. Maynard,

under orders of the Federal agent and of the patrolman, drove the car to Fayetteville and presumably the case was then handled in the usual manner by the Federal authorities.

Upon these facts the following questions arise:

(1) Was there any irregularity in the arrest of these prisoners? Without going into the constitutional requirements in these matters, it is sufficient to say that although in certain instances patrolmen are authorized to arrest without a warrant, the law (G. S. 15-46) is clear in providing that "every person arrested without warrant shall be either immediately taken before some magistrate having jurisdiction to issue a warrant in the case, or else committed to the county prison, and, as soon as may be, taken before such magistrate, who, on proper proof, shall issue a warrant and thereon proceed to act as may be required by law."

As pointed out in a memorandum from this office to Major John Armstrong, dated 31 July, 1943:

"This statute means that if the prisoner is arrested at a time and place when he can be taken straightway to a magistrate he must be so taken in order that a warrant may be issued and bail fixed. If the prisoner is arrested late at night or under circumstances which make it impossible for him to be taken immediately before a magistrate he may be imprisoned until the earliest time at which he can be taken before a magistrate for the issuance of warrant and the fixing of bail."

It does not appear in the case under consideration that there was any reason why the patrolman could not have signed the warrants after their issuance by the Clerk of the Recorder's Court. However, one prisoner was allowed to remain in jail two days without a warrant being issued against him. It is my opinion that this procedure is entirely illegal and is most reprehensible.

(2) Was it proper for the patrolman to withdraw the cases from the Recorder's Court after he had requested warrants to be issued?

The patrolman had arrested the prisoners and requested the Recorder's Court to issue the proper warrants. The warrants were prepared and placed where the patrolman might have signed them and proceeded to serve them. In such a case it is my opinion that the proceedings should have been continued in the Recorder's Court unless the consent of that Court was obtained to a withdrawal of the prosecutions.

(3) Was the patrolman authorized to arrest the prisoners and then turn them over to the Federal authorities?

An officer in making arrests has only such power as that with which the law has clothed him. Members of the State Highway Patrol are law enforcement officers of the State of North Carolina and their authority is defined in the statutes of North Carolina and in additional powers granted by the Governor pursuant to law. Nothing in these powers authorizes patrolmen to arrest for violations of the laws of the United States and, unless the patrolman derived such authority to arrest persons for violations of the Federal law from some act of Congress, he has no such power.

In the case under consideration the arrests were made for offenses which are violations of the laws of the State of North Carolina. The patrolman had ample authority to make such arrests and had he proceeded regularly with the proceedings there would have been no objections thereto. However, after having arrested for a violation of the State law, the prisoners were released to the Federal authorities since a violation of the Federal law was also involved. In my opinion this was improper. The prisoners could have been prosecuted in the State court and also in the Federal Court and such prosecutions would have been entirely independent of each other. Thus, after turning the prisoners over to the State court, there would have been no objection to the patrolman's notifying the Federal authorities in order that they might also make any investigation and arrest which they might deem necessary. Also, I know of no authority by which the patrolman could have acted in this case in making the arrest for the Federal Government; and if the arrest was not made for the Federal Government, he had no authority to voluntarily turn the prisoners over to the Federal Government.

I wish to make it clear that if any Act of Congress authorizes officers such as the patrolman to make arrests for the Federal Government, such arrests would be legal. For example, an act of Congress expressly authorizes any civil officer having authority under the laws of any state to arrest deserters without a warrant. See 6 C.J.S., page 584. However, in the situation under consideration, I have been unable to find any such authority. Furthermore, even if it had existed, it is entirely inconsistent with the patrolman's apparent original intention of prosecuting the prisoners in the State court which indicates that at the time the arrest was made he was arresting for the violation of a State offense.

I also wish to make it clear that this letter has no reference to arrests of members of the armed forces, with respect to which different principles are applicable.

OPINIONS TO MERIT SYSTEM COUNCIL

MERIT SYSTEM; "PREFERENCE RATING"; VETERANS OF UNITED STATES ARMY, ETC.

3 September, 1942.

I beg to acknowledge receipt of your letter of the 1st inst., relative to the above subject.

As you know, Section 3207(b) of the Consolidated Statutes provides that in all examinations of applicants for positions with this State or any of its departments or institutions, a preference rating of ten per cent shall be awarded for all the citizens of the State who served the State or the United States honorably in either the army, navy, marine corps, or *nurses corps* in time of war. I understand from your letter that the person in question is a woman who *enlisted* September 10, 1918, and was a student in the Army School of Nursing from said date until June 15, 1919.

If you find that this party was inducted into the nurses corps and was assigned to the Nursing School and served as a trainee in this school from September 10, 1918 to June 15, 1919, and was then honorably discharged as such trainee, then in my opinion she would be eligible for the ten points veterans preference rating provided by Section 3207(b) of the Consolidated Statutes.

(1) DOUBLE OFFICE HOLDING; MEMBER OF LEGISLATURE SERVING AS CASE WORKER. (2) MERIT SYSTEM COUNCIL;
APPLICATION OF "HATCH ACT"

9 March, 1943.

I acknowledge receipt of your letter of the 6th inst., in which you raise two questions.

(1) In view of Article XIV, Section 7 of the State Constitution, you inquire whether or not a person who is a member of the State Legislature may serve as a case worker on the welfare staff after the adjournment of the Legislature.

While a member of the State Legislature is an officer within the provision of Article XIV, Section 7, of the State Constitution, I am of the opinion that a case worker on the welfare staff of the county is not such an officer within the meaning of the provision of said section as to constitute double office holding.

(2) You inquire whether or not under the "Hatch Act" a member of the North Carolina General Assembly may serve as a case worker on the welfare staff of a county.

While Section 1 of Chapter 378 of the Public Laws of 1941 provides that no council member "shall have held a political office or have been an officer in a political organization during the year preceding his appointment, nor shall he hold said office during his term," said section

does not specifically prohibit a person who has held or who is presently holding a political office from serving in capacities of other than a council member.

I am unable to determine definitely as to whether or not a member of the Legislature is barred by the "Hatch Act" from serving as a case worker while holding office as such member of the Legislature, even though it has adjourned. I am enclosing herewith a copy of a statement made by Senator Hatch August 5, 1939, defining political activity under section 9, Senate Bill 1871, and I particularly call your attention to paragraph 14, which is the nearest approach to your present inquiry. This paragraph is as follows:

"Candidacy for nomination or for the election to any nation, State, county, or municipal office is within the prohibition."

I also refer you to my letter of October 1, 1942, addressed to you, which will throw some light on this subject.

MERIT SYSTEM; PROMOTIONAL EXAMINATIONS; VETERANS
PREFERENCE RATING

10 March, 1943.

You inquire as to whether, in my opinion, veterans preference rating should be applied to promotional grades given under the provisions of the Merit System Council Act.

Section 10 of Chapter 378 of the Public Laws of 1941, which is a part of the Merit System Council Act, provides:

"As far as is practicable and feasible, a vacancy shall be filled by promotion of a qualified permanent employee based upon individual performance, as evidenced by recorded service ratings, with due consideration for length of service, and upon capacity for the new position. Preference in promotion may be given to employees within the agencies, and all inter-agency promotions must be approved by the appointing authorities concerned. A candidate for promotion must be certified by the supervisor to possess the qualifications for the position as set forth in the specifications for the class of position for which he is a candidate, and he shall be required by the supervisor to qualify for the new position by promotional competitive or non-competitive examination administered by the supervisor."

Section 3207(b) of Michie's North Carolina Code of 1939 Annotated provides:

"Hereafter in all examinations of applicants for positions with this state or any of its departments or institutions, a preference rating of ten per cent shall be awarded to all the citizens of the state who served the state or the United States honorably in either the army, navy, marine corps, or nurses' corps in time of war.

"All departments and institutions of the state, or their agencies, shall give preference to such unemployed veterans as enumerated in this section in filling vacant positions in construction or maintenance of public buildings and grounds, construction of highways, or any other employment under the supervision of the state or its departments, institutions, or agencies: Provided, that the provisions of this Section shall apply to widows of such veterans and to the wife of any disabled veteran."

As Section 3207(b) provides that in all examinations of applicants for positions with the State or any of its departments or institutions a preference rating of ten per cent shall be awarded to veterans and Section 10 of the Merit System Council Act provides that a candidate for promotion is required to take a promotional examination to be administered by the Supervisor, it is my opinion that the Veterans Preference Act would apply.

MERIT SYSTEM COUNCIL; EXAMINATIONS; PERSONS ELIGIBLE; AGE
LIMIT; TEACHERS AND STATE EMPLOYEES RETIREMENT
SYSTEM; RETIREMENT ON ACCOUNT OF AGE

18 May, 1944.

Receipt is acknowledged of your letter in which you inquire as to whether, under the law, the Merit System Council may establish an age limit for those who wish to take merit examinations.

G. S. 126-4 provides that all applicants for positions in the agencies or departments affected by the chapter setting up the Merit System Council shall be subjected to an examination by the Merit System Council which shall be competitive and free to all persons meeting requirements prescribed by said Council, subject to reasonable and proper limitations as to age, health, and moral character. Thus, it will be seen that the Merit System Council is authorized to fix and determine reasonable and proper limitations as to age.

In determining what is a reasonable and proper limitation as to the age of applicants, it is my thought that you should take into consideration the provisions of the Teachers and State Employees Retirement Act.

G. S. 135-3, which is Section 3 of Chapter 25 of the Public Laws of 1941, known and designated as the Teachers and State Employees Retirement Act, provides that all persons who shall become teachers or State employees after the date as of which the Retirement System is established shall become members of the Retirement System. Thus, all full-time employees employed by the agencies or departments covered by the Merit System Council Act would become members of the Retirement System regardless of age.

G. S. 135-5 provides for voluntary retirement when an employee reaches 60 years of age, and when the member has attained the age of 65, he must be retired at the end of the year unless the employer requests such member to remain in service and notice of the request is given, in writing, 30 days prior to the end of the year. When a member attains the age of 70 years, he is retired forthwith unless the employer approves his remaining in service until the end of the year following the date on which he attains the age of 70 years, at which time he is automatically retired unless his employer and the Board of Trustees approve his remaining in service, and the request that he remain in service must be made by the employer at the expiration of each two-year period.

With these provisions of the Retirement System in mind, it appears to me that it would be almost useless to give the merit examination

to a person over 70 years of age. A person over 70 years of age cannot remain in service longer than the end of the year following the date on which he attains the age of 70 years without the approval of the Board of Trustees of the Retirement System, and it seems to me that it would necessarily follow that if a person is over 70 years of age, it would be necessary to secure the permission of the Board of Trustees of the Retirement System before such person could be employed.

The purpose of the Retirement Act is not only to provide security for faithful employees of the State but also to improve the efficiency of the personnel in the various departments and agencies of the State by eliminating persons who, on account of age or physical disability, are no longer able to properly and efficiently perform the services for which they were employed.

Of course, during the present emergency, the Board of Trustees has been very liberal in allowing employees who have reached the age of compulsory retirement to remain in the service. Likewise, the General Assembly has followed this course by the enactment of G. S. 135-15 (Chapter 195 of the Session Laws of 1943) which allows the re-employment of retired teachers and employees during the continuation of the present world war and for six months after its termination.

What I have said above is not intended as an attempt to influence the Merit System Council in fixing reasonable and proper limitations as to the age of applicants but merely to call to your attention the provisions of the Retirement Act, which would make it almost useless to give examinations to persons above the retirement age under the provisions of the Retirement Act.

OPINIONS TO STATE BOARD OF ALCOHOLIC CONTROL

INTOXICATING BEVERAGES; PURCHASES BY OR FOR MINORS

24 August, 1942.

I beg to acknowledge receipt of your letter of the 21st instant, in which you inquire whether or not a person can be prosecuted for buying whiskey for minors, and can such minor be held under bond as a material witness.

I am of the opinion that it is a violation of Section 3411, subsection (75), of the North Carolina Code for a person to buy intoxicating beverages for a minor. This section provides, among other things: "No alcoholic beverage shall be sold knowingly to any minor." And the last paragraph of said section says: "It shall be unlawful for any person to buy any alcoholic beverage if he be within the class prohibited from purchasing same as set out in this section, and it shall further be unlawful for any person to buy any alcoholic beverage for any person who may be prohibited from purchasing for himself under any of the provisions of this article."

Since this section prohibits the sale of intoxicating beverages to a minor and such section further prohibits the purchase by a third party of whiskey for any person prohibited from buying whiskey for himself under this section, it would, in my opinion, make a person guilty of a violation of this section if he bought intoxicating beverages for a minor.

I am further of the opinion that a minor can be held under bond as a material witness in such case.

INTOXICATING LIQUOR; USE AND MANUFACTURE OF MEDICINAL TONIC; TAX OF 24c PER GALLON

15 September, 1942.

On August 18 you enclosed a letter from Honorable John W. Caffey relative to the above subject. In your letter you requested us to render an opinion on Paragraphs 2 and 3 of Mr. Caffey's letter of August 7. We have had considerable correspondence with Mr. Caffey relative to this subject, and I am now in a position to render you an opinion as requested by you.

Mr. Caffey stated in his letter of August 7 that the B and W Products Company of Greensboro manufactures and markets a health tonic under the name of "Ferro Vita," which product contains, among other things, iron, yeast vitamins, glycerin and alcohol. He further stated that WPB had placed priorities on glycerin and alcohol which prevented his client from obtaining sufficient quantity of these products to manufacture the tonic in question. He further stated that they were able to get sherry wine in quantities sufficient to supply their needs, and that such wine could be substituted in place of the glycerin and alcohol.

You have asked our opinion as to the question raised in Paragraph 2 of Mr. Caffey's letter, which is as follows:

"I have advised them that I see no reason why they cannot, under the North Carolina law, purchase and have delivered to their Greensboro plant sherry (20%) wine for use in this respect as it is not being used or sold as an alcoholic beverage. It also appears that the statute levying the wine taxes does so on the basis of wine being an alcoholic beverage. You are now collecting, by means of tax certificates, 24c per gallon on this type of wine."

I have requested Mr. Caffey to furnish us the formula used in the preparation of the tonic, "Ferro Vita" and on August 28 he wrote me and again assured me that the tonic in question is not being manufactured as a beverage and is not fit for a beverage, but is being manufactured as a health tonic, and gave as the formula used: "Each fluid ounce is: 8 milligrams Thiamin Chloride (Vitamin B); 30 grains iron and ammonia citrate; and Sherry Wine."

He further stated that this sherry wine is reduced by the addition of cold water to an alcoholic content of 16 per cent and that this is the basis on which the wine is used as a substitute for glycerin and grain alcohol.

Mr. Caffey further stated that there are some twenty-five products on the market today using the same formula, except that most of them have a higher alcoholic content than that which is proposed to be used by his client. He further stated that his client is a member of the Proprietary Association of America, and that his product has been approved by this Association.

The primary question raised in Paragraph 2 of Mr. Caffey's letter is whether or not his client can legally purchase and have in his possession 20 per cent sherry wine for the purpose of converting the same into a health tonic which is not to be used, and is not fit to be used, as an alcoholic beverage.

If you find the facts to be as I have outlined them in this letter, that is, that the 20 per cent wine referred to is to be used in the manufacture and sale of a medicinal tonic not fit for a beverage, then I am of the opinion that it is legal for Mr. Caffey's client to purchase the 20 per cent sherry wine referred to in his letter for the purpose of manufacturing the tonic, "Ferro Vita," to be used for medicinal purposes and not as a beverage. I am basing this opinion on opinions expressed by former Attorney General Seawell in letters dated July 20, 1935, and November 19, 1935.

In the third paragraph of Mr. Caffey's letter he inquires whether or not his client should be required to pay the 24c per gallon "beverage tax."

Since I have concluded in answer to Paragraph 2 of Mr. Caffey's letter that it is legal for his client to possess and manufacture the tonic, "Ferro Vita" to be used for medicinal purposes and not as a beverage, I am of the opinion that the tax of 24c per gallon should not be collected since this tax is levied as a beverage tax and not against a tonic used for medicinal purposes.

INTOXICATING LIQUOR; FORTIFIED WINE; RIGHT OF PERSON TO TRANSPORT
MORE THAN ONE GALLON OF TWENTY PER CENT WINE

30 December, 1942.

You inquire as to whether, in my opinion, it is a violation of the law for a person to transport more than one gallon of twenty per cent wine.

Under the provisions of the Turlington Act, Chapter 1, Public Laws of 1923, it is unlawful to transport any intoxicating liquors except in specified instances enumerated therein. The word "liquor" or the phrase "intoxicating liquor" was defined in the Turlington Act so as to include alcohol, brandy, whiskey, rum, gin, beer, ale, porter, and wine, and in addition thereto any spirituous, vinous, malt, or fermented liquors, liquids, and compounds whether medicated, proprietary, patented, or not, and by whatever name called containing one-half of one per cent or more of alcohol by volume which are fit for use for beverage purposes.

The Turlington Act is still the law in North Carolina except to the extent that it may be modified or repealed by the Alcoholic Beverage Control Acts thereafter adopted by the General Assembly of this State. The General Assembly of 1941 enacted Chapter 339 of the Public Laws of 1941 in which it was provided that fortified wines could be sold or possessed for sale only by Alcoholic Beverage Control Stores operated in North Carolina, and the provisions of Chapter 49 of the Public Laws of 1937, as amended, being known and designated as the Alcoholic Beverage Control Act of 1937, were made applicable to fortified wines. It, therefore, appears that it was the intention of the Legislature to place fortified wines on the same basis as other intoxicating liquors which had theretofore been handled and disposed of under the provisions of the Alcoholic Beverage Control Act of 1937.

It is necessary, in order to answer your question, to examine the Alcoholic Beverage Control Act of 1937 and the Fortified Wine Control Act of 1941 in order to determine to what extent and under what conditions it is not unlawful to transport fortified wines in North Carolina. Certain provisions of the Alcoholic Beverage Control Act of 1937 are to be given State-wide effect. This is particularly true as to the transportation provisions with which the Turlington Act conflicts only in respect to liquor being transported to Alcoholic Beverage Control Stores and whiskey purchased from a county store and being transported in a sealed container and in an amount not to exceed one gallon for personal use and as to the transportation of a like quantity brought into the State in a sealed package and upon which the taxes have been paid. Section 2 of the Fortified Wine Control Act of 1941, to my mind, should be construed as allowing a person to purchase on order and receive by mail or express from an Alcoholic Beverage Control Store fortified wines in quantities not in excess of one gallon at any one time.

It, therefore, appears to me that it is still unlawful in this State for a person to transport intoxicating liquors or fortified wines in a

quantity in excess of one gallon unless such liquors or fortified wines are in actual course of delivery to a county store. The Turlington Act, in so far as it deals with the transportation within the State of intoxicating liquors, including fortified wines, is not inconsistent with the Alcoholic Beverage Control Act of 1937 or the Fortified Wine Control Act of 1941, except in the indicated particulars, and is still in force. *State v. Davis*, 214 N. C. 787; *State v. Carpenter*, 215 N. C. 635.

INTOXICATING LIQUORS; TRANSPORTING INTOXICATING BEVERAGES FROM
STATE SUPERVISED WAREHOUSE IN WILSON TO
GOVERNMENT RESERVATION

15 February, 1943.

I acknowledge receipt of your letter on the 8th inst., enclosing a letter from the Thurston Motor Lines, raising two questions:

(1) Whether or not a common carrier is permitted to accept shipments of intoxicating beverages from the Wilson, State supervised warehouse and transport the same through dry counties to a government reservation.

Section 4, subsection (n) of Chapter 49 of the Public Laws of 1937, provides for the establishment and supervision of warehouses for the storage of alcoholic beverages. This section specifically provides:

"Such warehousing or bailment of alcoholic beverages as may be made hereunder shall be for the convenience of delivery to alcoholic boards of control authorized to purchase the same."

It thus appears that alcoholic beverages stored in the State supervised warehouse at Wilson may be stored there solely for the convenience of delivery to alcoholic boards of control of the State. I am, therefore, of the opinion that alcoholic beverages stored in the Wilson State supervised warehouse may not be consigned to and transported by a common carrier from the warehouse through dry counties to government reservations.

(2) The other question raised is whether or not a common carrier may accept shipments from out of the State to be transported into the State through dry counties to an ABC operated store or a government reservation located in a dry county.

Since such shipment to a government reservation involves Interstate Commerce and is controlled by the Interstate Commerce Commission, I am of the opinion that alcoholic beverages may be consigned to and transported by a common carrier from a wet State into this State through dry counties to a government reservation located in a dry county in this State. All shipments of intoxicating liquors to ABC operated stores are governed by rules and regulations of the State ABC Board, and such shipments would be subject to the rules and regulations adopted by the State ABC Board regulating the purchase and delivery of alcoholic beverages to such stores.

STATE A. B. C. ACT; DISTRIBUTION BY COUNTY A. B. C. BOARD OF
UNEXPENDED LAW ENFORCEMENT RESERVE

17 August, 1943.

I acknowledge receipt of your letter in which you state that at the end of the fiscal year, June 30, 1943, New Hanover County had an unexpended reserve of \$33,624.90 in the 5 per cent law enforcement fund; that on June 30, 1943, the New Hanover County A.B.C. Board passed the following resolution:

"It appearing that there would be a very large balance remaining in the Law Enforcement reserve it was decided to redistribute this fund and the following resolution adopted, namely: That the balance shown in the Law Enforcement Account as of June 30, the close of the fiscal year, shall be distributed as follows:

To Town of Wrightsville Beach and Town of Carolina Beach in ratio of the sales of the total sales.

After deducting this sum two-thirds of the remaining balance shall be credited to the City of Wilmington; one-third to the County of New Hanover."

That the \$33,624.90 reserve fund was expended in accordance with the resolution.

You further state that the State Board of Alcoholic Control takes the position that all surplus funds in addition to actual expense of law enforcement activities, should be credited to the reserve for law enforcement to be used only for that purpose in subsequent quarters of its operation or until the present statute is amended. You inquire as to whether or not you are correct in this position.

The State-wide Act relating to the fund created for law enforcement is covered by Section 3411(74)(o), which says in part:

"To expend for law enforcement a sum not less than five per cent nor more than ten per cent of the total profits to be determined by quarterly audits and in the expenditure of said funds shall employ one or more persons to be appointed by and directly responsible to the respective county boards. . . ."

However, New Hanover County, by Chapter 471, Public-Local Laws of 1937, seems to be exempted from this State-wide Act. The last paragraph of Section 1 of said Chapter 471 of the Public-Local Laws of 1937 says:

"When the county store or unit is located within the Town of Wrightsville Beach or the Town of Carolina Beach, seventy-five per cent of the profits of said units shall revert to the general fund of the city or town, and twenty-five per cent to the General Fund of the County of New Hanover for use as heretofore provided. *However*, saving and excepting from all such divisions five per cent which shall be expended under allocation by the board for the enforcement of the provisions of all laws regarding the sale, manufacture and use of all beverages described in chapter (H. B.) fifty-five of the present session of the General Assembly."

The State-wide Act, while specifying that the fund shall be used for law enforcement purposes, requires that certain portions of it be used for certain specific methods of law enforcement. The only limitation upon the expenditure of the fund under the provisions of the Public-Local Act is that said fund shall be expended and allocated by the New

Hanover County A. B. C. Board for the enforcement of the provisions of all laws regarding the sale, manufacture and use of all beverages described in H. B. 55 of the 1937 session of the General Assembly.

Even so, until the 1937 Public-Local Act is amended, I do not think that the New Hanover County A.B.C. Board may turn the funds derived from the 5 per cent law enforcement fund over to the other governmental agencies of the county, except upon the condition that such fund shall be used by said governmental agencies for the law enforcement purposes enumerated in the last paragraph of Section 1 of said Chapter 471 of the Public-Local Laws of 1937.

It seems to me that the New Hanover County A.B.C. Board should amend the resolution distributing this fund to the Town of Wrightsville Beach, the Town of Carolina Beach, the City of Wilmington and the County of New Hanover, so as to require the governing bodies of these municipalities to expend the fund in question for the purposes enumerated in said Section 1 of Chapter 471 of the Public-Local Laws of 1937.

HALIFAX COUNTY A.B.C. BOARD; DATE FUNDS TURNED OVER TO COUNTY COMMISSIONERS; LIBRARY FUND

3 November, 1943.

I acknowledge receipt of your letter in which you inquire as to the date upon which the Halifax County A.B.C. Board is required to turn over to the County Commissioners the \$3,000 provided for in Section 4 of Chapter 433 of the Session Laws of 1943, to enable Halifax County to participate in the North Carolina Library Commission program.

The last paragraph in Section 5 of said Chapter 433 of the Session Laws of 1943 provides:

"The County Alcoholic Beverages Control Board of Halifax County shall set aside and pay over to the County Commissioners of Halifax County three thousand dollars (\$3,000.00) for Halifax County's participation in the North Carolina Library Commission's program."

Section 13 of said Chapter provides:

"That this Act shall be in full force and effect from and after March first, one thousand nine hundred forty-three."

The Act was ratified March 4, 1943.

I am, therefore, of the opinion that the Halifax County A.B.C. Board should turn said \$3,000 over to the Board of County Commissioners of Halifax County as soon after March 1, 1943, as said funds are available.

BEER AND WINE; FORTIFIED WINE; STATE MONOPOLY

17 March, 1944.

I acknowledge receipt of your letter in which you state that your Board has not promulgated any rules or regulations regarding the retail price of fortified wines but that the price is left to the retailer of such wines.

You express the opinion that in view of these circumstances, North Carolina is not a monopoly State in so far as the sale of fortified wines is concerned.

If I correctly understand the meaning of a monopoly State, I concur with you that North Carolina is not such a monopoly State in so far as it relates to the sale of fortified wines.

BEVERAGE CONTROL ACT; SHIPMENTS OF WINE AND BEER TO RESIDENTS
OF STATE FROM OUTSIDE STATE; TAXATION

29 March, 1944.

You have referred to me the letter of the Railway Express Agency dated March 8, 1944, with the request that I give you my opinion upon the question therein raised.

The question is whether, under North Carolina law, express shipments of beer, fortified wine, and unfortified wine originating outside of North Carolina can be made and delivered to residents of this State.

The 21st Amendment to the Constituion of the United States is in part as follows:

"Sec. 2. The transportation or importation into any state, territory, or possession of the United States for delivery or use therein of intoxicating liquors, in violation of the laws thereof, is hereby prohibited."

This question is therefore controlled entirely by the laws of North Carolina. The regulation of beer, ale, porter, etc., and of unfortified wines, is governed by Schedule F of the Revenue Act of 1939, as amended. Section 501 of the Act defines the beverages which are subject to its terms. Section 502 provides that "except as otherwise provided by law, the manufacture, possession, transportation or sale of wines other than those defined in Section five hundred and one (b) of this Article, including fortified wines, shall be subject to all the provisions of Chapter 1 of the Public Laws of one thousand nine hundred and twenty-three, commonly called the Turlington Act, as amended, and supplemented." Therefore, the following references to the provisions of Schedule F of the Revenue Act, or to sections falling within that schedule (Sections 500-528 inclusive), are concerned only with the regulation of beverages defined in Section 501, which include beer and unfortified wines.

Section 503 of the Act provides that the beverages defined in Section 501 may be transported into, out of, or between points in this State by common carriers on the condition that accurate records of such shipment are kept and reports thereon made. The Revenue Act provides for license taxes for manufacturers, bottlers, wholesalers and retailers. Section 518 provides that the tax upon beer shall be paid to the Commissioner of Revenue by the manufacturer or bottler and the tax on unfortified wines shall be paid by the wholesale distributor or bottler and Section 518½ provides for the furnishing of a bond by every nonresident engaged in selling beverages to wholesale dealers in this State, conditioned particularly that such nonresident shall not make sales of any of the beverages described in Section 501 to any person in this State except a duly licensed wholesale dealer.

In my opinion the intent of Schedule F of the Revenue Act, when it is construed as a whole, is to establish a system of licensing and taxation which will insure the collection by the State of all taxes levied

upon the sale of beer and unfortified wine in this State. Thus, the legislature provided that nonresident manufacturers shall sell only to wholesale dealers in this State for only by this system can tax evasion be reduced to a minimum. The intent is that residents of North Carolina shall buy beer and unfortified wines from wholesale dealers in this State who have been duly licensed as such and are thus under the supervision and control of the State. If residents of this State could at will legally order beer and unfortified wines from manufacturers without the State, there would be wide-spread evasion of the taxes on these beverages and the salutary effect of State supervision of sales of these beverages within the State would vanish.

It is true that Section 503 provides that "the purchase, transportation and possession of beverages enumerated in Section five hundred and one of this article by individuals for their own use is permitted without restriction or regulation." However, this provision must be read in its context and when so read it is my opinion that it means simply that the purchase by residents of this State of these beverages from wholesale dealers in this State and their possession and transportation pursuant to such purchase shall not be regulated. This construction is necessary unless an interpretation is to be adopted which is not in harmony with the other provisions of Schedule F and the evident legislative intent.

It is therefore my opinion that it is illegal for a resident of this State to purchase and have shipped to him beer or unfortified wine directly from a non-resident manufacturer or dealer. However, in this connection I should like to refer to an opinion of this office to the effect that if a resident of this State owns unfortified wine in another state, he may have it shipped to him in this State without violating the law. In such case there is no purchase. See opinion to Honorable Frank M. Wooten, dated 26 June, 1943.

With respect to fortified wines, it is my opinion that the shipment of such wines by out of state manufacturers directly to individuals in North Carolina is prohibited by Schedule FF of the Revenue Act.

Section 528(b) is as follows:

"Sec. 528(b). The purpose of this Act is to prevent and prohibit sales of fortified wines at any places in the State except through county operated Alcoholic Beverage Control Stores and to regulate such sales."

The purpose of this act is to prevent and prohibit sales of fortified wines at any places in the State except through county operated Alcoholic Beverage Control Stores or, in the case of those fortified wines classified as "sweet wines," through hotels, Grade A restaurants, drug stores, and grocery stores in counties having Alcoholic Beverage Control Stores (See Sec. 528(g)), and to regulate such sales. Section 528(d) makes it unlawful "for any person, firm or corporation, except Alcoholic Beverage Control Stores operated in North Carolina to sell, or possess for sale, any fortified wines as defined herein." Section 528(g) provides that the provisions of Public Laws 1937, Chapter 49, shall apply to fortified wines. That law contains the following provision: "It shall be unlawful for any person, firm, or corporation, to

purchase in, or to bring in this State, any alcoholic beverage from any source, except a person may purchase legally outside of this State and bring into the same for his own personal use not more than one gallon of such alcoholic beverage."

The last quoted provision, in its reference to the bringing into the State of alcoholic beverages of not more than one gallon, does not apply to the ordering of such beverages by a resident of this State but only to the situation in which the resident of this State personally goes into another state, purchases the beverages, and brings it with him back into North Carolina.

In view of these provisions I conclude that it would be illegal for a person in North Carolina to order and have shipped to him fortified wines directly from a source without the State.

It is my further opinion that it is immaterial whether the resident of this State purchases the wine or beer by ordering it from a non-resident dealer or whether he receives it as a gift from one in another state. Even in the case of the gift which is shipped into North Carolina, it is my opinion that the transaction would be illegal as contrary to the intent of the provisions of the Revenue Act.

INTOXICATING LIQUORS; WITHDRAWAL FROM STATE SUPERVISED
WAREHOUSE IN WILSON

14 June, 1944.

I acknowledge receipt of your letter, enclosing a letter from Honorable Martin H. Rawlyns, Acting Collector of Customs, Wilmington, North Carolina, and requesting my opinion as to the last paragraph in Mr. Rawlyns' letter.

Mr. Rawlyns inquires: "... whether the laws of the State of North Carolina relative to the control of alcoholic beverages will permit alcoholic beverages to be withdrawn from a customs bonded warehouse for consumption by private interests, such as the Imported Liquors Company, or must such alcoholic beverages be withdrawn from a customs bonded warehouse for consumption only by the various Alcoholic Beverage Control Boards."

Section 4 of Subsection (n) of Chapter 49 of the Public Laws of 1937, providing for the establishment and supervision of warehouses for the storage of alcoholic beverages, provides: "Such warehousing or bailment of alcoholic beverages as may be made hereunder shall be for the convenience of delivery to alcoholic boards of control authorized to purchase the same."

It thus appears that alcoholic beverages may be stored in the State supervised warehouse at Wilson solely for the convenience of delivery to alcoholic boards of control of the State, and that such beverages may not be stored in or withdrawn from said warehouse except by the interested alcoholic boards of control. I do not think that alcoholic beverages may be stored in or withdrawn for consumption by private interests, such as the Imported Liquors Company or other similar persons or corporations, but that the withdrawal from said warehouse must be for the purposes only of the various alcoholic beverage control boards.

OPINIONS TO UNEMPLOYMENT COMPENSATION COMMISSION

ESCHEATS; UNPAID EXPENSE CHECK; UNEMPLOYMENT COMPENSATION COMMISSION

16 September, 1942.

I have your letter of September 15, asking my opinion as to whether or not a check for \$25.00 in the hands of the State Treasurer, issued by the Employment Service in 1937 to a person for expenses incurred by the Employment Service, is subject to escheat to the University of North Carolina.

In my opinion, this amount is not subject to escheat to the University. Funds held by the State Treasurer would not escheat to the University unless express and direct provision was made by the legislature to cover such case. The only statute which I find which provides for any escheat for funds held by the State Treasurer is in Chapter 22, Section 4, Public Laws of 1939 (Michie's Code 5786(2)). This section provides for the escheat to the University of "all moneys *now* in the hands of the Treasurer of the State represented by State warrants in favor of any person, firm or corporation, whatsoever, which have been unclaimed for a period of five years shall be turned over to the University of North Carolina."

At the time this Act was passed the \$25.00 represented by this check had not been in the hands of the Treasurer for a period of five years, and, as the statute is confined to those funds "now" (referring to February 14, 1939, date of ratification of the Act), the statute would not apply.

SHERIFFS; SALARIES AND FEES; EXECUTION FEES WHEN JUDGMENT IS CANCELLED BY PLAINTIFF

5 December, 1942.

I acknowledge receipt of your letter of November 23, in which you state that the Unemployment Compensation Commission obtained a judgment against Scarboro-Safrit Lumber Company of Beaufort, North Carolina, in the sum of \$542.59. That upon docketing said judgment, you sent an execution to the Sheriff of Carteret County, which he served. That the proceeds of the judgment were sent direct to your Commission, and did not include the Sheriff's commission. You further state that later on your Commission had the judgment cancelled, and the Sheriff is now requesting your Department to pay him his commission, to wit, the sum of \$13.56.

You inquire whether or not your Commission can pay this fee to the Sheriff of the County. Since receiving your letter, I discussed the same with your Attorney, Mr. Moody.

Since the execution was sent to the Sheriff of Carteret County and was served by him, and remittance was sent direct to your Depart-

ment and the judgment cancelled by authority of the Department, thus depriving the Sheriff of the power to collect his execution fees, I am of the opinion that the North Carolina Unemployment Compensation Commission should pay to the Sheriff his fee of \$13.56. If you had not cancelled the judgment, thus denying to the Sheriff the right to collect his commission, he could have forced the defendant to pay the entire amount of the judgment, plus court cost, including his commission, and if the judgment was still in force, it occurs to me that he would be required to collect his commission from the defendant rather than from your Department.

TEACHERS AND STATE EMPLOYEES RETIREMENT SYSTEM; LUMP SUM
PAYMENTS BY EMPLOYEES UPON RETURN TO SERVICE AFTER ABSENCE

4 January, 1942.

In your letter of January 2 you state that on January 1, 1942, the employees of the Employment Service were, by executive order, transferred to the United States Employment Service. You further state that about fifty-five of these employees are now to be returned to State employment and that certain of these employees who have not withdrawn their accumulated contributions from the State Retirement System desire to make lump sum payments to the System covering the period of time they were in the employment of the Federal Government.

Under the provisions of Section 3 of the Teachers and State Employees Retirement Act, a person who becomes a member of the Retirement System does not lose such membership unless such member be absent from service more than five years in any period of six consecutive years or withdraws his accumulated contributions or becomes a beneficiary or dies. Therefore, if the employees to whom you refer did not withdraw their accumulated contributions, they retained their membership in the Teachers and State Employees Retirement System.

Section 8(1)(d) provides that in addition to the contributions deducted from compensation any member may, subject to the approval of the Board of Trustees, redeposit in the annuity savings fund, by a single payment, an amount equal to the total amount which he previously withdrew therefrom, as provided in the Act, and that such amount so deposited shall become a part of his accumulated contributions in the same manner as if said contributions had not been withdrawn.

I am unable to find any provision in the Teachers and State Employees Retirement Act which would authorize a lump sum payment into the Retirement System by a member to cover a period of absence from the service. Likewise, I am unable to find any provision in the Retirement Act which would require the employer to make contributions to the Retirement System to cover such period of absence from service.

In my opinion, it will be necessary that legislative sanction be secured before the Retirement System would be authorized to receive any lump sum payments from members covering a period of absence from service, under the conditions set out in your letter.

COMPENSATION OF COMMISSIONERS OF UNEMPLOYMENT
COMPENSATION COMMISSION

23 April, 1943.

I have your letter of April 22, referring to the amendment adopted by the General Assembly of 1943 to Section 10(c) of the Unemployment Compensation Commission law, relating to the per diem of Commissioners of the Unemployment Compensation Commission. This section, as amended, you quote as reading as follows:

"... and the members of the Commission other than the Chairman shall each receive \$10 per day, including necessary time spent in traveling to and from their place of residence within the State to the place of meeting while engaged in the discharge of the duties of this office, and his actual travel expenses. . . ."

As to this section, you submit the following questions:

"The question now arises as to how this time spent in traveling shall be compensated. I would like to obtain a ruling from your office upon the facts set forth below.

"If the Commission was actually in session for 1½ days, would a Commissioner receive \$15 or \$20?"

"The Chairman called the Commission meeting for April 16 and 17. The Commission convened at 10:30 a.m. on April 16 and adjourned at 1:30 p.m. on April 17. One Commissioner left his place of business at 5:00 p.m. on April 15 and returned to his place of business, arriving at 11:00 p.m. on April 17. He was away from his place of business two full working days or fifty-four hours, which is 2¼ days. Would he receive \$20, \$30, or \$22.50?"

In keeping with the policy indicated by the Legislature in the adoption of this amendment, I am of the opinion that the Commissioner referred to should be paid a per diem of \$30, \$10 of which would be for the day on which he left home at 5:00 p.m., and \$20 for the two days that the Commission was actually in session. I believe that the Legislature intended that, where any substantial portion of a day was required in the performance of the duty of the members of the Commission, the \$10 should be paid for it. I feel confident that it was not intended that fractions of days should be considered for the purpose of dividing up the fixed per diem compensation.

It is, therefore, my opinion that the \$10 per diem should be paid for each calendar day, a substantial portion of which was necessarily required by the Commissioner in traveling to and from the meeting of the Commission, as well as the days on which he attended actual meetings of the Commission. I believe that this was the purpose and intent of the 1943 amendment.

OFFICIAL BONDS; STATE TREASURER; GENERAL AND SPECIAL BONDS;
UNEMPLOYMENT COMPENSATION FUND

21 June, 1943.

In your letter of June 16, 1943, you inquire whether the State Treasurer of North Carolina is liable on his general official bond for the performance of his duties in connection with the management of

the unemployment compensation fund, which fund is covered by a special bond required of the State Treasurer. You state that it is necessary that you secure this information in order to advise the Bureau of Employment Security of the Social Security Board as to the situation in this State. The general bond of the State Treasurer is required by C. S., Section 7680. Under this statute the State Treasurer is required to execute a bond in the sum of \$250,000.00, "conditioned that he will faithfully execute the duties of his office."

When the Unemployment Compensation Commission was established in 1936 and the unemployment compensation fund was created, it was provided by statute that the State Treasurer should give a separate bond conditioned upon the faithful performance of his duties as custodian of the unemployment compensation fund. See N. C. Code, Anno. (Michie, 1939), Section 8052(9), subsection (b).

The general rule appears to be that, when a public officer is required to give a general bond for the faithful performance of his duties and new duties are subsequently imposed upon the office by statute, the general bond will not be liable for defaults in connection with the newly imposed duties, if a special bond is required of the officer in connection with the new duties. The rule is stated in Mechem (1890), Public Officers, Section 294, as follows:

"Where an officer charged with the performance of general duties in respect of which he gives a general bond, is also required to perform duties of a special kind and to give a special bond for their performance, the special bond is usually held to supersede the general bond as to the special duties, and the sureties upon the general bond will not be held liable for defaults covered by the special bond."

In 94 A.L.R., page 624, it is stated in an annotation that:

"Where the act imposing new duties also provides for the giving of new or additional security to secure their performance, it is usually held that the legislative intention is thereby shown to relieve the sureties on the original bond from any liability for the default of their principal in the performance of his new duties."

The North Carolina decisions would seem to be in accord with the rule as stated above. In *Governor v. Matlock*, 12 N. C. 214, a sheriff had executed a general bond for the performance of his duties as sheriff. Subsequently, a statute imposed upon the sheriff the additional duty of collecting taxes and required him to execute a separate bond in connection with his duties as tax collector. The Supreme Court held that the original bond of the sheriff was not liable for defaults in connection with his new duties, which were covered by the separate bond. In *Boger v. Bradshaw*, 32 N. C. 229, the *Matlock* Case is cited and the rule applied therein is approved.

Under the authorities discussed, I am of the opinion that the general bond of the State Treasurer is not responsible for the performance of the Treasurer's duties in connection with the unemployment compensation fund and that the unemployment compensation fund is covered by the special bond relative to that fund alone.

EXECUTORS AND ADMINISTRATORS; ESCHEATS; DISPOSITION OF UNEMPLOYMENT COMPENSATION BENEFITS WHERE NO ADMINISTRATOR HAS QUALIFIED AND C. S., SEC. 65(a) DOES NOT APPLY

24 June, 1943.

You state in your letter of June 14, 1943, that the Unemployment Compensation Commission desires a ruling as to the proper disposition of unemployment compensation benefits which have accrued before the death of a claimant, when no personal representative has been appointed for the estate of the claimant and the county in which he lives is one in which C. S., Section 65(a), does not apply. In the counties in which Section 65(a) does apply, payments of sums not exceeding \$300.00 may be made to the clerk of the Superior Court of the county in which the claimant lived and disposition may be made as provided in the statute. However, Section 65(a) is applicable only to a limited number of counties.

Upon the death of a person, title to his personal property passes to his executor or administrator. The next of kin of a deceased person have no right to his personal assets until there has been an administration of his estate in the manner provided by law. In a county in which C. S., Section 65(a), does not apply, I do not think the Unemployment Compensation Commission would be justified in paying benefits which had accrued to a deceased person before his death, to anyone other than a duly qualified executor or administrator. If no such person has qualified, it might be appropriate for the Commission to notify the next of kin that the funds will be held until such a person has qualified, but I do not think, under any circumstances, payment should be made to the next of kin directly. The Commission may withhold payments of benefits indefinitely until a person with proper authority applies for them.

I do not think that benefits which have been held as a result of failure of an executor or administrator to qualify would escheat to the University of North Carolina. The only two statutes under which the funds might be considered to escheat are C. S., Section 5786, and Chapter 22 of the Public Laws of 1939, which is codified as N. C. Code, Ann. (Michie, 1939), Section 5786(2).

This office has construed Section 5786 as being inapplicable to unclaimed funds in the hands of the State Treasurer and, of course, the State Treasurer is the custodian of the unemployment compensation fund. The only provisions for escheat of funds in the hands of the State Treasurer contained in Section 5786(2) are those relating to unclaimed funds of insolvent banks and those moneys in the hands of the Treasurer represented by State warrants. These provisions would probably be construed to apply only to funds held by the State Treasurer on the date of the ratification of the statute in 1939, but, in any event, they would not apply to the unpaid benefits which you mention, for such benefits are not represented by State warrants.

In addition to the fact that the escheat statutes do not appear to be broad enough to cover the funds which you mention, I am of the opinion that these funds would not escheat for the reason that other

provision was made for their disposition in the Unemployment Compensation Act. In N. C. Code, Ann. (Michie, 1939), Section 8052(9), it is provided that the Commission shall requisition from the State's account in the unemployment trust fund an amount estimated to be necessary for the payment of benefits for a reasonable future period. The funds so requisitioned constitute the benefit account from which benefits are paid. The statute provides that "any balance of moneys requisitioned from the unemployment trust fund which remains unclaimed or unpaid in the benefit account after the expiration of the period for which such sums were requisitioned shall either be deducted from estimates for, and may be utilized for the payment of, benefits during the succeeding periods, or, in the discretion of the Commission, shall be redeposited with the Secretary of the Treasury of the United States of America, to the credit of this State's account in the unemployment trust fund, as provided in subsection (b) of this section."

In my opinion, this express provision indicates the intent of the Legislature that unclaimed or unpaid benefits of the type which you mention in your letter should not escheat, but that the funds should be held to the credit of the Unemployment Compensation Commission.

UNEMPLOYMENT COMPENSATION ACT; INTERPRETATION OF THE PHRASE;
"LEFT WORK VOLUNTARILY WITHOUT GOOD CAUSE ATTRIBUTABLE
TO THE EMPLOYER," AS SAME APPEARS IN SECTION 5(a)
OF THE UNEMPLOYMENT COMPENSATION LAWS
OF NORTH CAROLINA

5 January, 1944.

Receipt is acknowledged of your letter of January 3, with enclosures, in which you request an interpretation of the phrase "left work voluntarily without good cause attributable to the employer," this section providing that an individual shall be disqualified for benefits for causes as provided therein including the phrase above quoted.

I have read your letter with a great deal of interest and I have considered very carefully the interpretation which has been placed upon this language appearing in the acts of other states by the authorities recited in the memorandum attached to your letter and those quoted therein.

It is particularly noted that the words "attributable to the employer" were added by the General Assembly of 1943 (see Chapter 377, Session Laws of 1943), and that the words "left work voluntarily without good cause" have been in Section (5)(a) continuously since the passage of the original Act by the Special Session of the General Assembly of 1936.

As to this you submit the following question:

"Considering the purpose and intent of the Unemployment Compensation Law should the Commission, in interpreting the word 'voluntarily' as applied to separation under Section 5(a) of the Act, inquire into the mental processes, constraining or compul-

sive forces or objective influences, or freedom or lack of freedom from external compulsion or necessity which led up to claimant's leaving work; or, on the other hand, should the inquiry of the Commission be limited to the question of whether or not the claimant left his work of his own motion, accord, or intentionally and irrespective of any extraneous forces, constraints, compulsion, or influences which brought about claimant's exercise of his volition?"

I think we can safely begin with the premise that it was the purpose of the General Assembly, in enacting the Unemployment Compensation Law found in Chapter 1 of the Public Laws, Extra Session, of 1936, to make some provision for those who are able and available for work and who are out of employment through no fault of their own.

Secion 2 of the Act provides, in part, that as a guide to the interpretation and application of the Act, the public policy of the State is declared to be as follows:

"Economic insecurity due to unemployment is a serious menace to the health, morals and welfare of the people of the State. *Involuntary unemployment* is, therefore, a subject of general interest and concern which requires appropriate action by the Legislature to prevent its spread and to lighten its burden which now so often falls with crushing force upon the unemployed worker and his family. The achievement of social security requires protection against this greatest hazard of our economic life. . . ."

I think we are fully justified in recognizing rules of statutory construction in seeking to determine the legislative intent to inquire into the purposes for which the law was enacted, and the ends which it seeks to attain, particularly with reference to the use of language which conceivably might have more than one meaning and which is, on that account, a proper object of construction.

It is inconceivable to me that the General Assembly, in enacting this beneficent social legislation intended that a person who had left his or her employment on account of illness, or other causes beyond control, would be considered as having forfeited the right to the benefits of the Act when such person, upon removal of such causes, is able and available for work but remains unemployed because of inability to find employment with his or her employer or in other suitable employment. I, therefore, am of the opinion that we would be justified in interpreting the word "voluntarily" and the phrase of which it is a part in such a way as to not deny the benefits of the Act to those for whom it was clearly intended to help, and this will result in what might generally be said to be a liberal interpretation rather than a narrow one, which apparently has been adopted in some jurisdictions.

In adopting a liberal interpretation, however, I believe that this interpretation should be confined to proper limits in order to give effect to the express intention of the General Assembly. In ascertaining whether or not an employee voluntarily left his employment, I think we would be justified in considering the mental processes, constraining or compulsive forces or objective influences, or the freedom or lack of freedom from external compulsion or necessity which led up to

the claimant's leaving work, but I think that the Commission should in every case be fully satisfied that, where an employee has left the employment, the reasons for so doing were of an impelling character which, in the opinion of the Commission, afforded ample and complete justification for the severance of his employment. This would exclude all fictitious or feigned reasons or excuses for failure to continue in the work and would comprehend only such causes as operated directly on the employee which made, in the opinion of the Commission, his continuance in the employment impossible, or attended with such circumstances as to make it unreasonably burdensome for him to continue therein.

It seems to me that a cause which only indirectly operated upon the employee should be excluded and that the circumstances should be such as could reasonably be considered to have deprived the employee of freedom of choice in the matter. It is evident that the illness of an employee of such a character and nature as to disable him or her from continuing in the employment would be such a cause as to make it necessary for the employee to discontinue his work as long as this condition existed. On the other hand, I am inclined to the opinion that, except under very unusual circumstances, an illness in the family of an employee would not provide such a cause. If we accept this interpretation of the language of the section, it would necessarily mean that the answers to the various questions which may arise, many of which are instanced in your letter, would have to be determined by the findings of the Commission in the particular cases. Upon proper findings being made in such matters, I am of the opinion that the purpose and spirit of the law would be carried out and a desirable result obtained.

With regard to your second question as to the procedural matter under Section 5(a) and the burden of proof, I would say that, in my opinion, the technical rule as to burden of proof observed in court trials would not be employed. I assume that the Commission would take all of the evidence connected with the matter, whether offered by the employer or the employee, and reach its conclusion based upon whether or not all of the facts so adduced did or did not show that the employee had voluntarily left the work without good cause attributable to the employer, without observing any technical rules of the burden of proof or going forward with the evidence.

UNEMPLOYMENT COMPENSATION LAW; EFFECT OF DOCKETING JUDGMENT FOR CONTRIBUTIONS; REFUNDS

25 January, 1944.

Receipt is acknowledged of your letter of January 21, in which you advise that you have a case pending in which it develops you assessed contributions against an employer upon his failure to pay within the time prescribed by the statute. You docketed a summary judgment and issued execution which was collected by the sheriff, together with interest, a remittance of which was made to you by the sheriff. You advise further that, thereafter, this judgment was cancelled and later, after a hearing, in an examination of the pay roll records of the

employer for the same period involved in that for which the assessment had theretofore been made, it was ascertained that the employer was indebted for contributions in a sum in excess of that for which the original assessment was made, and that the assessment was thereupon made for the total amount ascertained in the second instance, which amount was later paid by the employer in full.

You further advise that the question arises as to which amount should be refunded, the later amount which was collected not by a judgment but which is the correct amount, or the amount collected by the judgment.

Your question involves a consideration of the provisions of the Unemployment Compensation Act found in G. S. 96-10(b), authorizing a summary judgment in cases of this kind where the contributions remain unpaid.

In the instant case, the Commission would have authority under G. S. 96-10(e) to make a refund of the excess payment made by the employer; that is to say, the sum above that which was actually due by the employer. This would not, in my opinion, amount in any sense of setting aside the judgment which was placed on record under the provisions of the statute. The refund should be made in accordance with the provisions of the section referred to and no question of fraud whatever would enter into this, and, in my opinion, the question of fraud would not affect this repayment in any way. The other case to which you refer would be guided by the same consideration. If there is fraud in any case, the penalties would be those prescribed by G. S. 96-18.

The docketing of a judgment under the provisions of the statute is not considered by me as amounting to a judicial determination of the amount of the contributions which would preclude the Commission or the employer from properly raising a question as to the amount, in the event of under assessment or over assessment. If the Commission later found that the amount as certified and assessed was less than the amount due, upon proper notice to the employer, the additional sum might be assessed. If the assessment was over stated, the employer would have a right to pay it under protest and have the claim reduced by the Commission if the Commission found that the payment was excessive. The provisions of the statute permitting the docketing of the claim as a judgment amounts to no more than providing an expeditious remedy for collection of a contribution which may be properly due.

EXECUTION; PROCESS AGENT OF UNEMPLOYMENT COMPENSATION
COMMISSION; RIGHT TO FORCIBLY ENTER BUILDINGS

26 May, 1944.

I have your letter of May 25, in which you make inquiry concerning the right of a duly appointed process agent of the Unemployment Compensation Commission to forcibly enter buildings, other than dwelling houses, for the purpose of making levy upon personal property therein contained.

As you point out in your letter, G. S. 96-10(b), gives such agent the same authority as is possessed by a sheriff in making such levy.

In North Carolina, it has been held that an officer cannot break into a dwelling house without the consent of the owner for the purpose of executing civil process. *State v. Whitaker*, 107 N. C. 802; *State v. Armfield*, 9 N. C. 246.

As to buildings other than dwelling houses, the general rule as stated in 21 Am. Jur. 71, Section 134, is as follows:

"The maxim, 'a man's house is his castle,' extends only to his dwelling house; and therefore, a barn, garage, or outhouse not connected with the dwelling house may be broken open in order to levy an execution. Similarly, a sheriff has authority to break open a store or workshop unconnected with a dwelling house, or not forming part of the curtilage, for the purpose of levying an execution; and it has even been held that if a building is occupied, in different parts, for dwelling and for business, the officer may gain forcible access to the business part through a common door. In all such cases, a request must be first made for admittance, although it seems that a barn in a field may be opened without request. On the other hand, there is authority for the rule that the officer may not break open the door of a store for the purpose of levying an execution where the store occupies the first floor of the execution debtor's dwelling house, even though there is no way of entry from the store to the apartment upstairs. The same rule has been applied to the door of a single room used both as a shop and a dwelling."

Although I have found no North Carolina cases on the point, I believe that this general rule, as above stated, would be followed by the North Carolina courts. The case of *Haggerty v. Wilber*, 16 Johnson (N. Y.) 286, 8 Am. Dec., is an example of the application of this rule.

You state that you are faced with a particular problem in which the property upon which levy is sought to be made is located in a business office which is built onto the kitchen of the dwelling house in which the owner of the property formerly lived.

It is my opinion that your process agent would be authorized to make forcible entry into that office. Although the office is physically connected with the dwelling house, it is my opinion that the fact that the house is unoccupied voids any immunity which the house might enjoy were it occupied. The immunity extended to dwelling houses in the cases with which we are concerned is based upon the ancient idea that "a man's house is his castle."

In making such entry, your agent should be careful not to use any more force or do any more damage to the property than is necessary to effectuate the entry.

OPINIONS TO STATE PROBATION COMMISSION

COURTS; ENFORCEMENT OF CONDITIONS OF SUSPENDED SENTENCE

12 October, 1942.

I beg to acknowledge receipt of your letter of the 9th inst., enclosing a copy of a judgment entered by Judge D. L. Pickard of the Davidson Recorder's Court, containing certain conditions in the suspended sentence. I understand from you that it is suspected that the defendant has violated one or more of the terms and conditions of the suspended sentence, and you enclose a copy of a proposed judgment to be signed, revoking the judgment of probation and putting into force the original sentence in the case.

You state that Judge Pickard desires to know whether or not this proposed judgment would be a sufficient finding of fact as to the violation of the terms of one of the conditions of the suspended sentence and whether or not he has the authority to revoke a probation judgment and commit the defendant on finding that he has violated the terms of the judgment.

From my conversation with you, I understand that Judge Pickard was somewhat concerned about the case of *State v. Rogers*, reported in 221 N. C. 462, and he doubts whether or not he has the authority to revoke the judgment of probation and to commit the defendant for violation of the terms of the probation agreement.

The case of *State v. Rogers* was tried in the Municipal Court of the City of Winston-Salem, and the defendant was given a sentence suspended on certain conditions. Later the defendant was brought into Court and the Judge found as a fact that the defendant had violated the terms and conditions of the suspended sentence and ordered him to be committed. The case then was carried before Judge Warlick on a writ of certiorari. Judge Warlick dismissed the writ of certiorari and remanded the case to the Municipal Court for disposition. The defendant appealed from Judge Warlick's decision to the Supreme Court.

While the Supreme Court reversed the decision of Judge Warlick, this case cannot be construed as denying to an inferior court the right of enforcing the conditions of a suspended sentence, or revoking the probation agreement and committing the defendant to jail. The decision of Judge Warlick was reversed because the Judge of the Municipal Court did not make a sufficient finding of fact as to the violation of the terms of the suspended sentence. One of the conditions of the suspended sentence in that case was that "no woman be allowed to reside on any farm controlled by the defendant unless such woman dwell with mentally competent male members of her family." While the Municipal Court Judge found that a woman had been residing on the farm of the defendant and had been found in company with the defendant, the Court did not find that such woman did not dwell with mentally competent male members of her family.

I am of the opinion that the original judgment of Judge Pickard is a valid and binding judgment, and that he has the power and authority to revoke the terms of the probation judgment and to enforce the

terms and conditions of the suspended sentence by committing the defendant to jail for the term specified in his judgment, upon the Court finding as a fact that the defendant has violated the terms and conditions of the suspended sentence, one of which is: "The defendant shall not associate with one Margaret Ledford at any time anywhere," and upon so finding that the defendant has violated the terms and conditions of the probation judgment and of the suspended sentence, and in particular finding that the defendant has violated the terms and conditions of the probation judgment and suspended sentence "by being found with Mrs. Margaret Ledford on the night ofato'clock and on the night ofato'clock in a road house known as the '400 Club' located four miles south of Winston-Salem on the Winston-Salem-Lexington highway."

PROBATION; REVOCATION OF PROBATION JUDGMENT

9 December, 1942.

I acknowledge receipt of your letter of the 9th inst., in which you state that in November 1941, G. W. Bill pled guilty to the crime of perjury in the Superior Court of Cumberland County and was given a two years' suspended sentence and placed on probation for a period of three years. That the proposed judgment, among other things, contains the regular conditions, one of which is that the defendant shall violate no State or Federal penal law.

You further state in your letter that this same defendant entered a plea of guilty to the crime of driving an automobile after his license had been revoked, and was fined \$50.00 and assessed the cost. That following this, the Motor Vehicle Department revoked his license for a period of twelve months.

I understand that you have filed with the Superior Court a petition setting out that this defendant operated a motor vehicle on the streets and highways of the State of North Carolina during the period of time in which his license had been revoked, and that on occasions of the driving of the automobile he did not have in his possession, nor was he entitled to have, an operator's license. That in said petition you are requesting the Superior Court to revoke the probation judgment and enforce the suspended sentence.

From the above set out facts, it appears that the defendant has violated a State penal law in that he has operated a motor vehicle upon the streets and highways of the State of North Carolina during the period of time in which his operator's license had been revoked.

I am, therefore, of the opinion that upon a proper finding of facts by the court to the effect that the defendant has violated the terms and conditions of the probation judgment, in that he has violated one of the conditions of said probation judgment by operating a motor vehicle upon the streets and highways of the State of North Carolina during the period of time in which his license had been revoked and without having, or being entitled to, an operator's license, that the proper court can revoke said probation judgment and enforce the suspended sentence therein provided.

OPINIONS TO BOARD OF EXAMINERS OF PLUMBING AND HEATING CONTRACTORS

ISSUANCE OF LICENSE WITHOUT EXAMINATION; CHAPTER 52, PUBLIC
LAWS OF 1931, AS AMENDED

18 January, 1944.

I have your letter of January 14, in which you write me as follows:

"An individual who resided in a town of less than thirty-five hundred population on February 27, 1931 (date of ratification of Chapter 52, Public Laws of 1931) was *not* engaged in the plumbing or heating business according to State Revenue Department records. It is contended that he paid Schedule B taxation for the fiscal year of 1933-34 and accordingly was issued a privilege tax under Section 155 of the Revenue Act to engage in the business of plumbing and heating in this State. He further contends that the limitations of the original act exonerated him whether he was engaged in the business or not.

"His resident town is now embraced within the provisions of the act as amended by Chapter 224, Public Laws of 1939, in that it is officially designated as having a population of more than thirty-five hundred as of the official United States Census for 1940.

"Upon the foregoing, this individual now contends and demands that this Board issue to him a license, without examination, to engage in the business of plumbing and heating contracting."

I understand from your letter that it is contended by one, Jack Biddle of Albemarle, North Carolina, that the original Act did not apply to him whether he be in the plumbing and heating business or not, for the reason that Albemarle as of February 27, 1931, was a town having less than thirty-five hundred population.

Chapter 52 of the Public Laws of 1931 is, in part, as follows:

"Sec. 6. All persons, firms or corporations desiring to enter into or carry on the Plumbing and/or Heating Contracting business, shall first apply to the Board of examination and license, at least thirty days prior to engaging in said business, said application to be accompanied by certified check in the sum of \$50.00; Provided, that the *requirements of this section* shall not apply to persons engaged in the Plumbing and/or Heating business, in towns or cities having a population of not more than thirty-five hundred."

"Sec. 12. . . . All persons *now* engaged in the Plumbing or Heating business and holding a state license shall receive his or their license, or renewal thereof to engage in said business without examination upon payment of an annual license fee of \$50.00."

From the above, *all* persons who were engaged in the plumbing or heating business on February 27, 1931, and holding a State license were granted a license without examination upon proper application. This individual was not engaged in the plumbing or heating business on February 27, 1931, and did not hold a license as granted by the State of North Carolina under the provisions of Section 155 of the Revenue Act, and, therefore, was not entitled to a license without examination, regardless of his residence.

It is contended by the individual that he paid Schedule B taxation for 1933-34, and by virtue of his act, qualified himself to receive a license from your Board without examination. I see nothing in the original Act or its amendments that would support this position.

The individual contends further that the *original* Act and its amendments did not apply to him and that, since Albemarle now is within the provisions of the Act (having a population of more than thirty-five hundred), he is entitled to all the licenses as issued by your Board on the theory that he was not granted consideration under the original provisions.

As stated above, Section 6 of Chapter 52 of the Public Laws of 1931 reads, in part, as follows:

" . . . Provided, that the requirements of this *section* shall not apply to persons engaged in the Plumbing and/or Heating business, in towns or cities having a population of not more than thirty-five hundred."

Opportunity under the original Act was granted to all by the wording:

"Sec. 12. . . . *All persons now engaged* in the Plumbing or Heating business and *holding* a State license shall receive his or their license, . . . to engage in said business without examinations. . . ."

Section 6, as referred to above, required that *all* persons desiring to enter into or carry on the plumbing or heating business first apply to the Board for license and excluded those who were engaged in the said businesses in towns having a population of not more than thirty-five hundred as to the requirements of this section.

Section 12, as referred to above, sets forth that all persons who were engaged in the business *as of the passage* of this Act and holding a license from the State shall receive a qualifying license from your Board without examination. This privilege of license without examination remained in the original Act from February 27, 1931, to March 30, 1939, when same was deleted.

The original Act, under Section 6, said ". . . provided, that the requirements of *this section* shall not apply to persons engaged in the Plumbing and/or Heating business, in towns or cities having a population of *not more than thirty-five hundred.*"

Section 3 of Chapter 224 of the Public Laws of 1939 strikes out Section 6 of the original Act, and I quote in part from the rewritten section:

" . . . *that the requirements of this Act* shall apply only to persons, firms or corporations engaged in the business of either plumbing or heating contracting, or both, in cities or towns *having a population of more than thirty-five hundred.*"

Since the town of Albemarle now is officially shown by the United States Census as having a population of more than thirty-five hundred, the provisions of the Act would apply, as the Act in contemplation of law speaks as of the present time or the time in which the provisions of the Act are to be applied.

PLUMBING AND HEATING CONTRACTORS; BOARD OF EXAMINERS;
EXAMINATION FOR LICENSE; FILING OF APPLICATION;
RULES AND REGULATIONS OF BOARD

18 March, 1944.

Receipt is acknowledged of your letter of March 16 in which you inquire as to whether the State Board of Examiners of Plumbing and Heating Contractors would be authorized to amend Section 4 of the by-laws of the Board so as to specify a reasonable time limit prior to the examination for the filing of an application.

From an inspection of the Act governing the licensing of plumbing and heating contractors, it does not appear that any specific time is fixed prior to the examination for the filing of the application. Section 87-21 of the General Statutes of North Carolina, which is Section 6 of the original Act, as amended, provides, in part:

"Regular examinations shall be given by the Board in the months of February and August of each year and additional examinations may be given at such other time as the Board may deem necessary."

This section also provides for special examinations under certain conditions which would not be applicable to the subject matter of your inquiry. Section 87-18 of the General Statutes, which is Section 3 of the original Act, as amended, provides, in part:

"The Board shall have a common seal and formulate rules and regulations to govern its actions."

No date being fixed in the Act itself for the filing of an application to take the examination, and the Board being authorized to formulate rules and regulations to govern its actions, it is my opinion that the Board would have a right to amend Section 4 of the present by-laws so as to specify a reasonable time limit prior to the examination for the filing of an application.

OPINIONS TO BURIAL ASSOCIATION COMMISSION

BURIAL ASSOCIATION COMMISSIONER; FUNDS COLLECTED; APPLICATION OF EXECUTIVE BUDGET ACT

21 July, 1943.

You inquire as to whether, in my opinion, the funds collected by the Burial Association Commissioner, appointed under the provisions of Chapter 130 of the Public Laws of 1941, would come under the provisions of the Executive Budget Act.

Section 29 of Chapter 100 of the Public Laws of 1929, known and designated as the Executive Budget Act, provides:

"It is the intent and purpose of this act that every department, institution, bureau, division, board, commission, State agency, person, corporation, or undertaking, by whatsoever name now or hereafter called, that expends money appropriated by the General Assembly or money collected by or for such departments, institutions, bureaus, boards, commissions, persons, corporations, or agencies, under any general law of this State, shall be subject to and under the control of every provision of this Act. Any power expressed in this act or necessarily implied from the language hereof or from the nature and character of the duties imposed, in addition to the powers and duties heretofore expressly conferred herein, shall be held and construed to be given hereby to the end that any and all duties expressed may be fully performed and completely accomplished and to that end this act shall be liberally construed."

Under the provisions of Chapter 130 of the Public Laws of 1941, all Mutual Burial Associations then organized and operated in the State of North Carolina, and all Mutual Burial Associations thereafter organized and operated within the State, were placed under the general supervision of a Burial Association Commissioner, to be appointed by the Governor of the State of North Carolina, whose term of office was to be for a period of four years, and his salary to be fixed by the Governor. The Act further provides for the collection of certain license fees, and the collection of certain other monies in the form of assessments, to be used by the Burial Association Commissioner for supervisory purposes. Chapter 130 of the Public Laws of 1941 was amended by Chapter 272 of the Session Laws of 1943, but this amendment did not change the general provisions of the Act, in so far as it relates to the question under consideration. Under the provisions of Chapter 130 of the Public Laws of 1941, as amended, the Burial Association Commissioner is authorized to expend money collected by him under a general law of the State of North Carolina, the monies collected being in the form of license fees and assessments made against the various Burial Associations operating within the State.

As the Executive Budget Act provides that it shall not only apply to the expenditure of money appropriated by the General Assembly, but to money collected by departments, institutions, bureaus, boards,

commissions, persons, corporations, or agencies, under any general law of the State, it is my opinion that the funds collected and expended by the Burial Association Commissioner would be subject to the provisions of this Act.

PERPETUAL CARE CEMETERIES; AUDITS AUTHORIZED BY CHAPTER 644,
SESSION LAWS 1943

8 December, 1943.

I have your letter of December 7, in which you ask me to advise what power and authority the Burial Association Commissioner has under Chapter 644 of the Session Laws of 1943 to examine and audit the books, records and accounts of perpetual care cemeteries on and prior to the date of final ratification of this Act.

The Act referred to provides in Section 3 that every public cemetery shall file with the Commissioner, on the dates prescribed, a report giving certain information as to all cemeteries which do or do not offer perpetual care of burial lots or spaces sold to the public, which includes agreements offered to prospective purchasers and a plat of the cemetery. Sections 4 and 5 of the Act provide as follows:

"Sec. 4. If such cemetery shall report that it advertises or claims to provide the perpetual care of lots or grave spaces included in its property, such report shall state the amount of its perpetual care fund as of date of above required report, manner of computing same, how and by whom controlled, description of securities in which fund is invested, and copies of all agreements entered into by the cemetery relating thereto.

"Sec. 5. No such cemetery shall hereafter cause or permit advertising of perpetual care fund in connection with the sale or offer for sale of its property unless the amount deposited in said fund from all sales made subsequent to the passage of this Act shall be equal to not less than four dollars per grave space, sold, said sum to be deposited in perpetual care fund as provided in Section six hereof."

Section 6 of the Act provides that the perpetual care fund of any cemetery licensed shall immediately be turned over to a reliable trustee to be kept and invested as provided in that section.

Section 13 of the Act provides as follows:

"Sec. 13. This Act shall be administered by the Burial Association Commissioner of North Carolina, who shall make periodic examination of affairs of such cemeteries to ascertain whether they are in fact complying with the terms hereof. Examinations shall be made not less frequently than once a year and more frequently if by him deemed necessary."

From the above quoted and referred to provisions of the Act, I am of the opinion that the Burial Association Commissioner, in ascertaining whether the associations are in fact complying with the terms of the Act, would have authority to examine the books, records and accounts of such associations for the purpose of ascertaining whether or not such association had correctly reported the amount of the perpetual care fund which such association should have had on hand

as of the date of the report required by Section 3, and whether or not the same had been correctly computed in accordance with the agreements entered into by the cemetery relating thereto with its purchasers.

The Act, in requiring such association to report the amount of the perpetual care fund of such association, the manner of computing the same, by whom controlled, a description of the securities in which it has invested and copies of agreements entered into by the cemetery relating thereto, made these definite requirements of such associations as to its transactions affecting perpetual care prior to the requirements of the Act with respect to perpetual care to be observed after its enactment, and Section 13, it seems to me, requires the Burial Association Commissioner to make periodic examinations to ascertain whether such associations are in fact complying with the terms thereof. These examinations would, of course, include the operations of such associations after the effective date of the Act with respect to perpetual care funds as well as the operations prior to that time.

In the event such association should fully comply with the provisions of the law with respect to making the reports required, containing in sufficient detail all the information required by the Act as to such perpetual care fund, it might well be that no fund audit or examination of its records would be necessary or required. But if such reports on their face indicate that an audit or examination is probably necessary in order to ascertain the correct status of such funds, I am of the opinion that the Burial Commissioner would be empowered by the Act to make such examination in order that the true status of such funds could be properly ascertained.

OPINIONS TO RURAL ELECTRIFICATION AUTHORITY

RURAL ELECTRIFICATION AUTHORITY; ELECTRIC MEMBERSHIP CORPORATIONS; RIGHT TO RENDER SERVICE TO NON-MEMBER USERS; DETERMINATION OF MEMBERSHIP IN CORPORATION

22 October, 1942.

The first question you raise is whether a corporation duly created under the Electric Membership Corporations Act may render service to non-member users.

Section 1694(17) of Michie's North Carolina Code of 1939 Annotated, being Section 11 of Chapter 291 of the Public Laws of 1935, provides:

"The corporate purpose of each corporation formed hereunder shall be to render service to its members only, and no person shall become or remain a member unless such person shall use energy supplied by such corporation and shall have complied with the terms and conditions in respect to membership contained in the by-laws of such corporation."

The Supreme Court of North Carolina in the case of Bailey v. Light Company, 212 N. C. 768, held that by express provision of Section 11, Chapter 291, Public Laws of 1935, no person, although a member of the community proposed to be served by an electric membership corporation, is entitled to service from such corporation unless he is a member thereof.

I am, therefore, of the opinion that a corporation created under the provisions of the Electric Membership Corporations Act would have no right to serve any person, firm, or corporation who or which is not a member of such corporation. It is my thought that if such corporation should undertake to serve non-member users of electric energy, it would be going beyond the statutory authority under which it was created and would, in effect, become a public utility subject to the jurisdiction of the Utilities Commission.

Your second question relates to who has the power to define and determine membership in an electric membership corporation.

Section 1694(12) of Michie's North Carolina Code of 1939 Annotated, being Section 6 of Chapter 291, Public Laws of 1935, provides, among other things, that the certificate of incorporation of an electric membership corporation shall state the terms and conditions upon which members of the corporation shall be admitted. Subsection (a) of Section 9, Chapter 291, Public Laws of 1935, being a portion of Section 1694(15) of Michie's Code, was stricken out by virtue of Chapter 260 of the Public Laws of 1941 and rewritten to read as follows:

"(a) The power to adopt and amend by-laws for the management and regulation of the affairs of the corporation: Provided, however, that the certificate of incorporation may reserve to the members of the corporation the power to amend the by-laws.

The by-laws of a corporation may make provisions not inconsistent with law or its certificate of incorporation, regulating the admission, withdrawal, suspension or expulsion of members; the transfer of membership; the fees and dues of members and the termination of memberships on nonpayment of dues or otherwise; the number, times and manner of choosing, qualifications, terms of office, official designations, powers, duties, and compensations of its officers; defining a vacancy in the board or in any office and the manner of filling it; the number of members to constitute a quorum at meetings, the date of the annual meeting and the giving of notice thereof, and the holding of special meetings and the giving of notice thereof; the terms and conditions upon which the corporation is to render service to its members; the disposition of the revenues and receipts of the corporation; regular and special meetings of the board and the giving of notice thereof."

Under the law governing electric membership corporations, as now written, if the terms and conditions upon which members of the corporations shall be admitted are not set out in detail in the certificate of incorporation, the board of directors would have the right to adopt by-laws making provisions not inconsistent with laws or the certificate of incorporation regulating the admission, withdrawal, suspension or expulsion of members. However, if the certificate of incorporation of an electric membership corporation reserves to the members of the corporation the power to amend the by-laws, then the members of the corporation and not the board of directors would have the power to adopt by-laws regulating the admission, withdrawal, suspension or expulsion of members. Of course it is necessary that, in order for a person to become or remain a member of an electric membership corporation, such person use energy supplied by the corporation. The remainder of the rules and regulations governing membership are matters to be governed by the certificate of incorporation and by-laws of each particular corporation.

OPINIONS TO STATE BOARD OF COSMETIC ART

COSMETIC ART; STATE BOARD; ADMISSION OF OPERATORS FROM OTHER STATES; TEMPORARY PERMITS

12 July, 1943.

You inquire as to whether in my opinion the North Carolina State Board of Cosmetic Art has the right to issue temporary permits to work to applicants who are licensed in other states but who are not eligible for registration under the Act creating the North Carolina State Board of Cosmetic Art, as amended.

Section 5259(19) of Michie's North Carolina Code of 1939, Annotated, which is Section 19 of Chapter 179 of the Public Laws of 1933, provides:

"Persons who have practiced cosmetic art in another state and who move into this state shall prove and demonstrate his, or her fitness, physical or otherwise as set out in sections 10 and 12, to the Board of Cosmetic Art Examiners, as herein created, and as herein provided, before they will be issued a certificate of registration to practice cosmetic art, but said Board may issue such temporary permits as are necessary."

In undertaking to answer your question, I have given thorough consideration to all the provisions of the cosmetic art act, as amended. This was done in order to secure some idea of the intent of the General Assembly in enacting the section authorizing the Board to issue temporary permits.

It might be argued from a consideration of the last portion of Section 5259(19) that the Board would be authorized to issue temporary permits to persons already licensed in another state without such person's meeting the requirements of the Act other than taking the examination. However, when the whole section is viewed in connection with the remainder of the Act, the effect of such a view or argument is, to my mind, almost entirely removed. If such construction should be put on this particular section, it would mean that the Board would be authorized to allow persons from other states who have not completed one thousand hours of training to practice in North Carolina while persons who live in North Carolina and who have the same number of hours training would not be entitled to practice in this state. This would mean discrimination of the worst sort and I do not believe that the Legislature, in enacting this section, had in mind giving the Board the right to practice discrimination against persons who live in this state and take their training in the State of North Carolina.

It is my opinion that the General Assembly intended to authorize the Board to issue temporary permits to persons properly licensed in other states and who possess all the qualifications prescribed in our law to make them eligible for the examination and that such temporary permits should be used to authorize such persons to practice in this state between the time they move into the state and the time they are able to take the examination required under our statute.

COSMETIC ART; REGISTRATION PROCEDURE; APPLICATION OF ACT TO
PERSONS APPLYING AFTER JANUARY 1, 1942

29 June, 1944.

Receipt is acknowledged of your letter of June 28 in which you raise the question as to whether the provisions of Sections 10 and 12 of Chapter 179 of the Public Laws of 1933 (G. S. 88-10 and 88-12) would apply to persons applying for registration under the provisions of Section 20 of the Act (G. S. 88-20) where the application was filed after January 1, 1942.

Subsection (e) of this section provides that all persons who do not make application prior to January 1, 1942 shall be required to take the examination prescribed by the State Board of Cosmetic Art Examiners and otherwise comply with the provisions of the chapter, as amended, before engaging in the practice of cosmetic art. Thus, the provisions of the section are available only to applicants who filed their applications prior to January 1, 1942. *Poole v. Board of Examiners*, 221 N. C. 199.

It is therefore my opinion that all the provisions of the Act would be applicable to persons who file applications after January 1, 1942.

OPINIONS TO INDUSTRIAL COMMISSION

WORKMEN'S COMPENSATION ACT; OCCUPATIONAL DISEASES; DUTY TO EXAMINE EMPLOYEES OF EMPLOYERS REJECTING ACT

12 October, 1942.

I have your letter of October 12, in which you call attention to Section 15 of the North Carolina Workmen's Compensation Act, providing for a waiver of legal defenses by an employer who rejects the Act, and to Section 50½, et seq., providing for certain procedures in cases of employers in whose employment there is found exists hazards and asbestosis and/or silicosis, as to which you submit the following question:

"1. Do the provisions of Section 50½ (i) of the Workmen's Compensation Act hereinabove quoted apply to an employer who has rejected or elected not to operate under the provisions of the Act?"

In my opinion, the provisions of Section 50½ (i) of the Act do not apply to an employer who has rejected or elected not to operate under the provisions of the Act. The Act, together with all amendments thereto, including the occupational disease amendment which was adopted by the General Assembly of 1935, is inapplicable to employers who have rejected the Act in the manner provided therein, except to the extent provided in Section 15 withdrawing from such employer certain common law defenses.

The conclusion reached as to your first question makes it unnecessary to answer the other questions, which depend upon an affirmative answer to the first question.

In response to the question submitted to me in conference, I beg to advise that in my opinion the State Board of Health would have the power to make reasonable inspections of premises of an employer operating a plant which could be reasonably thought to cause a hazard of asbestosis and/or silicosis, but there is no provision in the law permitting the Industrial Commission to make such examinations as to a rejecting employer.

WORKMEN'S COMPENSATION ACT; OCCUPATIONAL DISEASES; DIVULGING INFORMATION DERIVED FROM EXAMINATIONS AS TO EMPLOYERS COVERED AND NOT COVERED BY ACT

19 October, 1942.

I have your letter of October 16, referring to the coöperative activity of the Division of Industrial Hygiene of the State Board of Health and the North Carolina Industrial Commission, as to which you submit three questions:

"First, if the Division of Industrial Hygiene has certain information in their files obtained from the examinations of an employee in the state, and after this information was procured in the regular manner the employer rejects the provisions of the Workmen's

Compensation Act or begins employing less than five persons, would the Division of Industrial Hygiene be under obligations to furnish this employer and employee of any such employer information with reference to any examination made while the employer and employee were subject to the Act?"

I am of the opinion that if the request for the information is made after the employer had rejected the provisions of the Workmen's Compensation Act or begins employing less than five persons, there would be no obligation to furnish the employer with information derived from the employee's examination as to individual cases. I believe it would be entirely proper to furnish the employer with information of a statistical character, showing the presence of occupational types of disease among the employees.

Your second question is as follows:

"Second, what is the status of the Industrial Hygiene Division with reference to furnishing information to employers and employees based upon examination made of a disease not covered by the Workmen's Compensation Act; to wit, tuberculosis, or any other condition?"

In my opinion, it would not be proper for the Industrial Hygiene Division to furnish the employer with the information as to the physical condition of employees as to any disease which is not closely allied to or which subjects the employee to an occupational disease hazard. In the case of tuberculosis, which I understand is a disease which makes an employee more readily subject to dust diseases, it would seem proper from the standpoint of both employer and employee that this information should be given to the employer or employee, in which case there is additional reason for furnishing information of diseases such as tuberculosis which subjects fellow employees to the dangers of infection.

Your third question is as follows:

"Third, is the employer entitled to the findings of the Division of Industrial Hygiene without the written consent of the employee where neither the employer nor the employee are subject to the provisions of the North Carolina Workmen's Compensation Act?"

I think the employer would be entitled to information as to employees suffering from infectious or contagious diseases. With this exception, it is my opinion that the employer should not be furnished with any information except of a general or statistical character in cases in which the employment is not subject to the Workmen's Compensation Act.

WORKMEN'S COMPENSATION ACT; PREMIUM TAX; SELF-INSURERS

10 November, 1943.

I acknowledge receipt of your letter in which you state that the Virginia-Carolina Chemical Corporation, which is a self-insurer of its compensation liability in this State, advises you that:

"Effective October 1, 1943, amendment has been made to the manual for workmen's compensation insurance issued by the

National Council of Compensation Insurance, calling for the exclusion of that portion of wages paid which is derived from application of a surcharge above and in addition to the regular wage rate to hours worked in excess of the standard work week, from the amount of payroll on which workmen's compensation premium is to be paid."

And inquires:

"Would not such exclusion apply to payrolls of self-insurers for the calculation of tax? Shall appreciate your advices."

You inquire as to whether or not the Commission would be actually within its right and authority to advise the Virginia-Carolina Chemical Corporation and other self-insurers of the State that they may calculate their self-insurance tax on the basic manual insurance rate referred to in the inquiry of the Virginia-Carolina Chemical Corporation.

I assume that the amendment referred to in the letter from the Virginia-Carolina Chemical Corporation has been approved by the Insurance Commissioner of the State of North Carolina.

Section 8081(cccc) of the Consolidated Statutes, Subsection (c) imposes the tax referred to in the following language:

"(c) Every person, partnership, association, corporation, whether organized under the laws of this or any other state or county, every mutual company or association and every other insurance carrier insuring employers in this State against liability for personal injuries to their employees, or death caused thereby, under the provisions of this article, shall, as hereinafter provided, pay a tax upon the premium received, whether in cash or notes, in this State, or on account of business done in this State, for such insurance in this State, at the rate provided in the Revenue Act then in force, which tax shall be in lieu of all other taxes on such premiums, which tax shall be assessed and collected as hereinafter provided; provided, however, that such insurance carriers shall be credited with all canceled or returned premiums actually refunded during the year on such insurance."

It will be noted from the quoted section that the tax upon premium received shall be at the "rate provided in the Revenue Act then in force." The pertinent portion of Section 208, Subsection 2, of the current Revenue Act reads as follows:

"This rate of tax on premiums for liability under the Workmen's Compensation Act for all insurance companies collecting such premiums shall be four per cent (4%) on all premiums collected in this State on such liability insurance, and a corresponding rate of tax shall be collected from self-insurers."

I am, therefore, of the opinion that the Virginia-Carolina Chemical Corporation and other self-insurers of the State are required to calculate their self-insurance tax on the same basic payroll week upon which insurance carriers are required to calculate the premium tax paid by them.

OPINIONS TO STATE HOSPITALS AND INSTITUTIONS

HOSPITALS FOR THE INSANE; INSANE PERSONS AND INCOMPETENTS;
ADMITTANCE OF PATIENTS; CERTIFICATE OF PHYSICIAN;
RESIDENT PHYSICIAN; ARMY DOCTORS

20 July, 1942.

You inquire if you, as Superintendent of the State Hospital, should accept the signature of an Army physician, stationed in North Carolina, on the questionnaire of the commitment papers of a lunatic. You also inquire whether, if such a signature is not legal, you would be justified in accepting it under present conditions.

Section 6196 of the Consolidated Statutes provides that in a lunacy proceeding certain questions, therein specified, with their respective answers by at least one licensed physician, *resident* of this State, shall be transmitted with the other papers to the Superintendent of the proper hospital. This Section specifically requires that the physician shall be a resident; therefore, I am of the opinion that only a resident physician's signature would be legal and acceptable.

I am of the opinion that a licensed physician of another state would not become a resident of this State merely because he is an officer of the armed forces of the United States and is stationed at a camp in North Carolina. Residence is defined in *Watson v. R. R.*, 152 N. C., 215 (1910), as follows:

"Residence is dwelling in a place for some continuance of time, and is not synonymous with domicil, but means a fixed and permanent abode or dwelling as distinguished from a mere temporary locality of existence; and to entitled one to the character of a 'resident,' there must be a settled, fixed abode, and an intention to remain permanently, or at least for some time, for business or other purposes.' To same effect *Coleman v. Territory*, 5 Okl., 201; 'Residence indicates permanency of occupation as distinct from lodging or boarding or temporary occupation. "Residence" indicates the place where a man has his fixed and permanent abode and to which, whenever he is absent, he has the intention of returning.' In *Wright v. Genesee*, 117 Mich., 244, it is said: 'Residence means the place where one resides; an abode, a dwelling of habitation. Residence is made up of fact and intention. There must be the fact of abode and the intention of remaining.' And in *Silvey v. Lindsay*, 42 Hun. (N. Y.) 120: 'A place of residence in the common-law acceptance of the term means a fixed and permanent abode, a dwelling place for the time being, as contradistinguished from a mere temporary local residence'."

I am of the opinion that the intent to remain is not present in the case of an Army physician stationed at a camp in North Carolina, and, therefore, the physician would not be a resident within the contemplation of the statute. Of course, if the Army physician is a North Carolina physician assigned to an Army Camp in North Carolina, his signature on the questionnaire would be legal.

Since Army physicians are not residents of North Carolina, I am of the opinion that their signatures on the questionnaires should not be accepted. This should not cause any hardship, as resident physicians are always obtainable. Since an inquiry into the sanity of the person is to be held by the Clerk of the Court, there should be ample time to have the questionnaire answered by a resident physician.

SCHOOLS; COMPULSORY ATTENDANCE LAW; ENFORCEMENT; DUTIES OF WELFARE OFFICERS

31 July, 1942.

You inquire if the welfare officers of the various counties of the State are relieved of all liability for assisting in the enforcement of the compulsory attendance law.

Prior to the year 1939, it was clearly the duty of the welfare officers in the various counties of the State to investigate and prosecute all violators of the compulsory attendance law, the applicable Sections being Consolidated Statutes 5017, which provided that the County Superintendent of Public Welfare should be the chief attendance officer of the county, and Consolidated Statutes 5761, which provided that the County Superintendent of Public Welfare or chief school attendance officer or truant officer provided for by law shall investigate and prosecute all violators of the compulsory attendance law.

The General Assembly of 1939 enacted Chapter 270 of the Public Laws of 1939, which was made a part of Consolidated Statutes 5759, and this Chapter provided that the County Board of Education in a county administrative unit and the Board of Trustees in a city administrative unit might employ special attendance officers to be paid from funds derived from fines, forfeitures and penalties, or other local funds, and that said officers shall have full authority to prosecute for violations of the compulsory attendance law. This Chapter contained a proviso to the effect that in any unit where a special attendance officer is employed, the duties of chief attendance officer or truant officer, in so far as they related to such unit, were transferred from the County Superintendent of Public Welfare to the special attendance officer of the unit.

The General Assembly of 1941, in enacting Chapter 270, Public Laws of 1941, rewrote Consolidated Statutes 5017, which outlines the powers and duties of County Superintendents of Public Welfare, and omitted therefrom that portion of the Section which designated the County Superintendent of Welfare as the chief school attendance officer of the county. That portion of Consolidated Statutes 5761 which places the duty of investigating and prosecuting violators of the provisions of the compulsory attendance law on the County Superintendents of Public Welfare is not referred to in Chapter 270 of the Public Laws of 1941, and does not seem to be affected by it.

Thus, it would seem to me that in the absence of a local statute designating some other person as chief school attendance officer or truant officer, or in the absence of employment of such a person under the provisions of Chapter 270 of the Public Laws of 1939, the County Superintendent of Public Welfare would still be charged with the duty of investigating and prosecuting all violators of the compulsory attendance law. I do not have any information as to how many counties in the State have employed attendance officers under Chapter 270, Public Laws of 1939.

REGISTRATION OF INMATES UNDER SELECTIVE SERVICE ACT

17 August, 1942.

I beg to acknowledge receipt of your letter of the 14th inst. relative to the above subject.

I have discussed your letter with Major Jonas of the Selective Service Board, and Section 611-4 provides that no inmate of an institution of the character of the East Carolina Training School is subject to registration under the Selective Service Act until he is discharged from the institution. It appears that the registration of your inmates is not a proper registration. I suggest that you have the members of your local selective service board contact the State office, and it will advise them along this line.

CASWELL TRAINING SCHOOL; INMATES WHO HAVE BEEN DISCHARGED
RETURNING IN VIOLATION OF INSTRUCTIONS BY SCHOOL

28 August, 1942.

I wish to acknowledge receipt of your letter of August 27, in which you inquire whether or not you would be within the law to arrest and indict for trespass an inmate of your institution who has been discharged.

I understand from your letter that the inmate in question had reached the age of twenty-six years and attained an intelligence quotient of 76—, which is above the average, and that he had been discharged for the further reason that he had become a menace to children who are inmates of the institution, and that he has threatened to return to the school.

In my opinion, your Board has the right to discharge an inmate of your institution under the circumstances outlined in your letter, and if he returns to the school after you have notified him not to return, he could be charged with trespass and tried in the courts. He would not have any more legal right to be upon the lands or occupy the buildings of the institution than a stranger who had been warned against trespassing upon the property.

EDUCATIONAL INSTITUTIONS; NORTH CAROLINA SCHOOL FOR THE DEAF AT
MORGANTON; RIGHT TO PARTICIPATE IN TEXTBOOK
DISTRIBUTION AND RENTAL SYSTEM

31 October, 1942.

You inquire as to whether, in my opinion, the North Carolina School for the Deaf at Morganton is entitled to participate in the textbook distribution and rental system enacted by the General Assembly. You state in your letter that this office in an opinion dated June 10, 1938, ruled that the North Carolina School for the Deaf at Morganton was a public school.

I assume that you refer to a letter dated June 10, 1938, written to the Superintendent of the State School for the Blind and Deaf at

Raleigh, North Carolina. If this is the letter to which you refer, you will note that this office held that the State School for the Blind and Deaf was an educational institution rather than an asylum and I am unable to find any language in the letter which would leave the impression that it was to be considered as a public school in the strict sense of the word.

By reference to the statutes which create the North Carolina School for the Deaf at Morganton, Consolidated Statutes 5888 to 5893, inclusive, it will be noted that the institution is set up as an educational institution for the benefit of white deaf children resident of the State who are between the ages of 8 and 23 years, with the proviso that the Board of Directors may admit students under the age of 8 years when, in its judgment, such admission will be for the best interests of the applicant and the facilities of the school permit such admission.

The School is operated on funds furnished by a budget adopted by the Legislature of North Carolina. The Act providing for free textbooks and a textbook rental system creates and provides for a system of distribution of textbooks so that they may be available for the children of the public schools.

It is my opinion that the North Carolina School for the Deaf would not be considered as a part of the public school system of the State of North Carolina as contemplated by the statutes governing the distribution of textbooks to the public schools. It is my thought that the Legislature, in enacting the law providing for the distribution of textbooks in the public schools, did not contemplate that the various educational institutions of the State outside the public school system would be entitled to participate in the program.

HOSPITALS FOR THE INSANE; CONVICTS BECOMING INSANE; COMMITMENT TO HOSPITAL; RELEASE OR TRANSFER

2 December, 1942.

You state that one Rex Griggs, while serving a sentence of from four to seven years in State's Prison, was admitted to the Criminal Insane Department of the State Hospital at Raleigh. You further state that this man's sentence expired on September 30, 1942, and that his mother desires that he be transferred to the State Hospital at Morganton. You further state that in your opinion his condition is such that he would be confined somewhere perhaps indefinitely. You desire to know whether you would have the right to transfer this person to the State Hospital at Morganton.

Section 6238 of Michie's North Carolina Code of 1939 Annotated provides:

"All convicts becoming insane after commitment to the state prison, and the fact being certified as now required by law in the case of other insane persons, shall be admitted to the hospital designated in Section 6236. In case of the expiration of the sentence of any convict, insane person, while such person is confined to the said hospital, such person shall be kept until restored to his right mind or such time as he may be considered harmless and incurable."

It will be noted that in Section 6236 the hospital designated for white persons is the State Hospital at Raleigh. Construing Sections 6238 and 6236 together, it is my opinion that it is your duty to keep the person referred to confined in the Criminal Insane Department of the State Hospital at Raleigh until he is restored to his right mind or such time as he may be considered harmless and incurable.

It is my opinion that you would not be authorized to order the transfer of this person to the State Hospital at Morganton.

HOSPITALS FOR THE INSANE; CHEROKEE INDIANS; RIGHT OF ADMISSION TO
STATE HOSPITAL AT MORGANTON

23 December, 1942.

Receipt is acknowledged of your letter of December 21 in which you state that the Clerk of the Superior Court of Jackson County informs you that he has a full-blooded Indian who resides on the Cherokee Indian Reservation in Jackson County, and that this Indian is in need of treatment in a State Hospital. You desire to know whether this patient is eligible to be received in the State Hospital at Morganton.

Section 6153(a) of Michie's North Carolina Code of 1939, Annotated provides:

"The state hospital at Raleigh and the state hospital at Morganton shall be exclusively for the accommodation, maintenance, care and treatment of the white insane of the state, and the state hospital at Goldsboro shall be exclusively for the accommodation, maintenance, care and treatment of the colored insane, epileptics, feeble-minded and inebriates of the state. The line heretofore agreed upon by the directors of the state hospital at Raleigh and the state hospital at Morganton shall be the line of division between the territories of said hospitals, and white insane persons settled in counties east of said line shall be admitted to the state hospital at Raleigh, and white insane persons settled in counties west of said line shall be admitted to the state hospital at Morganton; epileptics shall be admitted as now provided by law. White inebriates shall be admitted to the state hospital at Raleigh."

This Section would seem to eliminate the admission of Indians to your institution.

Section 6154 provides that all the insane and inebriate Cherokee Indians of Robeson County and all the insane and inebriate Croatan Indians of the other counties of the State shall be cared for in the Hospital for the Insane at Raleigh.

There is considerable doubt in my mind as to whether the statute as written is broad enough to include the Indian mentioned in your letter. It is possible that the Legislature, in enacting this statute, overlooked the Cherokee Indians residing in Western North Carolina.

STATE INSTITUTIONS; OCCUPANCY OF INSTITUTIONAL COTTAGE BY
EMPLOYEE; MUST VACATE AT END OF EMPLOYMENT

8 January, 1943.

I acknowledge receipt of your letter of the 7th inst., in which you state that the Hospital furnishes to certain of its employees, as part

of their compensation for services, a cottage owned by the Hospital, for the occupancy of the employee and members of his family. You further state that one of such employees has recently severed his connection with the Hospital but refuses to vacate the cottage. You inquire whether or not it is necessary to give notice to such employee before requiring him to vacate.

It is my opinion that such employee occupies the cottage at the will of the Hospital and because he is an employee of the Hospital, and upon the severance of his employment he should immediately vacate the cottage without any specified length of time being given him to vacate. At the most, he is only a tenant at will and should vacate upon the request of the Hospital.

HOSPITALS FOR THE INSANE; INSANE PERSONS AND INCOMPETENTS;
OPERATIONS UPON PATIENTS

20 January, 1943.

By your letter of January 18, 1943, you have requested my opinion as to the procedure to be followed in performing operations upon mental patients in the State Hospital at Raleigh. You state that in the past it has been the practice at the Hospital to obtain the written permission of the spouse of the patient or the next of kin but that you are wondering if, in a case of this kind, the consent of a guardian is necessary.

The procedure for performing surgical operations on inmates of penal or charitable hospitals and institutions of the State of North Carolina is provided by statute. In C. S., Section 7221, it is provided that the medical staff of any penal or charitable hospital or institution of the State of North Carolina is permitted and instructed to have surgical operations performed upon inmates when, in the opinion of a board set up in the following section, such operation would be for the improvement of the mental, moral or physical condition of the inmate. A proviso to this section states that the operation shall not be performed unless approved by the Governor and the secretary of the State Board of Health. In C. S., Section 7222, the board mentioned in the preceding section is set up and it is provided that it shall be composed of at least one representative of the medical staffs of the several charitable and penal institutions of the State and one from the State Board of Health.

In my opinion, you would be justified in having surgical operations performed upon patients when the approval of the board and of the Governor and the secretary of the State Board of Health has been obtained, as provided in the sections mentioned above. As a matter of courtesy, it seems appropriate to obtain the consent of the spouse or next of kin as has been the practice of the Hospital. However, where the statutory procedure has been followed. I do not think it is absolutely necessary to obtain the consent of either the spouse, the next of kin or a guardian.

STATE INSTITUTIONS; STATE SCHOOL FOR THE BLIND AND DEAF;
SUPERINTENDENT ELECTED FOR TERM OF THREE YEARS

15 June, 1943.

I acknowledge receipt of your letter in which you state that the minutes of the Board passed in June 1941, recite that the Superintendent was elected for a term of two years, whereas, the statute provides that he shall be elected for a three year term; you state that at the same meeting a steward and a physician were elected for a term of two years each, which is in accordance with the statute. You suggest that it appears there was some confusion of the term of office of the Superintendent with that of the steward and physician, who were elected at the same time.

From your letter I understand that the members of the Board do not have any personal interest in the matter nor is the question raised in an effort to limit the term of the incumbent Superintendent to two years, but you merely inquire as to what action the Board should take in order to make the minutes meet the requirement of the statute applicable to the term of office of the Superintendent.

Section 5874 of the Consolidated Statutes, relating to the "President, executive committee, and other officials; election, terms and salaries," provides:

"The board shall elect a superintendent who shall be ex officio secretary of the board, and whose term of office shall be for three years; also a steward and physician whose term of office shall be for two years. . . ."

Section 5880 provides:

"The board of directors shall, on the second Monday in May, one thousand nine hundred five, and every three years thereafter, elect an officer to be styled superintendent. . . . The term of office of the superintendent and steward shall begin June first. . . ."

It is apparent from the referred to sections that it was mandatory upon the Board of Directors at its meeting in June 1941 to elect a Superintendent for a term of three years, and that it did not have authority to elect said Superintendent for a term of office of any length of time other than a term of three years. If the Superintendent was elected by the Board at the June meeting for any length of time, it was for three years. As suggested in your letter, it appears to me that the Board was confused by the terms of office of other employees whom it was naming at the same time it elected the Superintendent.

I am of the opinion that the minutes of the Board should be amended so as to speak the truth and show that the Superintendent was elected for a term of office of three years as prescribed by the statute. The Board has authority to do this, and I refer you to the case of Railroad v. Lenoir County, 200 N. C. 496. In that case the minutes of the Board of Commissioners recited a levy of a tax of twenty-three cents on property valued at \$100, which was in excess of the constitutional provision that the total of the State and county tax on property shall not exceed fifteen cents except when the county property tax is levied for a special purpose with the approval of the General Assembly.

The Commissioners contended that the county tax of only fifteen cents was levied and the remaining eight cents was for special purposes, and with special legislative approval, and that the entry on the minutes of the Board was an error of the draftsman which was corrected at a subsequent meeting of the Board. The Court said:

"We have held that while a board of county commissioners cannot with retroactive effect change a tax which it has purposely imposed in the way the law prescribes, it may correct an erroneous entry upon the minutes so that the record shall, in the language of the law 'speak the truth' concerning the tax."

I am of the opinion that since the statute requires your Board to elect a Superintendent for a term of three years, and the Board did at the proper time, elect said Superintendent, who has served for two years, with the consent and knowledge of the Board, thus ratifying its acts in electing him, it is apparent that he was elected for a term of office of three years, and the minutes of the Board ought to be corrected accordingly.

APPROPRIATION FOR BLIND STUDENT AID; SESSION LAWS 1943; CHAPTER
152, PUBLIC LAWS 1921; PURPOSE FOR WHICH FUNDS
MAY BE EXPENDED

1 July, 1943.

I have your letter of June 30, in which you refer to Chapter 152 of the Public Laws of 1921 and the construction placed upon this Act by Honorable Dennis G. Brummitt in an opinion dated August 18, 1932, in which Mr. Brummitt held that the aid provided for in the Act might be extended to a blind student attending a school of osteopathy in the State of Missouri. I have before me a copy of the letter written by Mr. Brummitt, to which reference is made.

I understand from your letter that a question has arisen as to whether or not the provisions of Chapter 152 of the Public Laws of 1921, as construed by Mr. Brummit, should now be followed in expending money provided by the appropriation made by the General Assembly of 1943, found in Chapter 530, Section 1, IV 14 (2).

Upon an examination of our laws, I find that Chapter 152 of the Public Laws of 1921 was repealed by Section 6, subsection (37), of Chapter 275 of the Public Laws of 1925, the repeal being in this language:

"(37). That Sections five thousand eight hundred and eighty-seven (a) and five thousand eight hundred and eighty-seven (b) of the Consolidated Statutes, Volume three, be and the same are hereby repealed."

Chapter 152, aforesaid, brought forward in the third volume of the Consolidated Statutes, constitutes the Code sections above referred to.

This repeal is found in the Maintenance Appropriation Act of 1925. In this same Act, in Section 1 under Title XI—State Aid and Subsidies—subsection (7), the following appropriation is made:

"Blind Student Relief, School for Blind and Deaf, \$2,000.00 for each year of the biennium."

In the budget for the next biennium, on page 474, under the heading of Purposes and Objects, in the budget for the State School for the Blind and the Deaf, there is listed the following:

"For blind student aid through the State School for the Blind and the Deaf, Chapter 152 of 1921," \$2,400.00 for each year of the next biennium, estimated and recommended by the Budget Commission."

The Appropriations Act as heretofore mentioned makes the appropriation as recommended.

Notwithstanding the repeal of Chapter 152 of the Public Laws of 1921, the budget reference above quoted indicates that the appropriation made was intended to be expended in accordance with the provisions of that Act, and this reference, in my opinion, would be a sufficient expression of legislative intent to control the manner in which the appropriation should be spent.

The opinion of Attorney General Brummitt, construing the 1921 Act, has been consistently followed by your institution in expenditures of the appropriations which have been made by the several Appropriations Acts enacted since the opinion was expressed. It is a well established principle that the construction placed upon a legislative act by an administrative official, and particularly the Attorney General, which is of long standing and which has been acted upon consistently, should not be changed except upon the weightiest consideration. The Act having been construed by Attorney General Brummitt, it would be assumed that subsequent appropriations by reference to it would be, in the light of his construction, an acceptance of it. By making no change in the law, the construction of the statute would in effect become a part of it.

For the reasons stated, I am of the opinion that your institution would be thoroughly justified in continuing to follow the opinion expressed by Attorney General Brummitt in his letter of August 18, 1932, in the expenditure of the appropriation made for the next biennium.

INSANE PERSONS; NON-RESIDENTS; PERSON ON PAROLE FROM FEDERAL
PENITENTIARY; COMMITMENT TO STATE HOSPITAL

10 August, 1943.

You state in your letter of August 9, 1943, that you have an application for admission to the State Hospital of a patient in Pasquotank County who has been paroled from a Federal prison in the State of Washington. The period of parole for this patient will expire in October 1943. You have inquired whether he may be legally admitted to the State Hospital.

As you know, it is provided in Section 6187 of the Consolidated Statutes that only persons who are bona fide residents of this State may be committed to the State Hospital. In my opinion the fact that this patient was confined in a Federal prison in the State of Washington would not have the effect of making him a non-resident, provided he was a resident of this State at the time of his confinement. A change of legal residence is effected by a change in the place where one lives,

coupled with an intent to make the new abode one's permanent home. The mere fact of involuntary confinement in a prison is not of itself sufficient to result in a change of residence. It is, of course, possible that this patient changed his residence so as to become a resident of Washington or some other state prior to his commitment to the Federal prison. It is the duty of the Clerk of Court in all cases to ascertain that a person is a resident of North Carolina before committing him to the State Hospital and he should be satisfied of this fact before ordering the commitment of the patient in the instant case.

I do not think that the fact that the patient is on parole and subject to the jurisdiction of the Federal parole authorities would prevent your receiving him at the State Hospital under the laws of this State. Of course, the Federal authorities retain a measure of jurisdiction over him and, if they are unwilling for him to be confined in the State Hospital, I would advise you to release him to them.

HOSPITALS FOR THE INSANE; PATIENTS; DISCHARGE; PLACING ON PROBATION

15 September, 1943.

Receipt is acknowledged of your letter relative to Mr. William Hanley Parris, one of the former patients of the State Hospital at Morganton. You state that Mr. Parris was placed on probation from the institution on September 19, 1941 and was formally discharged on September 4, 1942 as improved. Since being discharged, Mr. Parris has established residence in the State of Ohio and his attorneys now request that the Board of Directors of the State Hospital at Morganton enter an order finding that he has been restored to sound mind and memory and unconditionally discharging him from the hospital as fully restored to sound mind and memory. You desire to know whether, in my opinion, the Board of Directors would be authorized to enter such order.

Section 6214 of Michie's North Carolina Code of 1939, Annotated, provides that any three of the Board of Directors, upon the Superintendent certifying the facts, shall be a Board to discharge or remove from their hospital any person admitted as insane when such person has become or is found to be of sane mind or when such person is incurable and, in the opinion of the Superintendent, his being at large will not be injurious to himself or dangerous to the community. The section further provides that the Board may permit such person to go to the county of his settlement on probation when, in the opinion of the Superintendent, it will not be injurious to himself or dangerous to the community, and that the Board may discharge or remove such person upon other sufficient causes appearing to them.

Section 6215 provides that each superintendent may, for the space of thirty days or until the next meeting of the Board of three Directors provided for in Section 6214, discharge upon probation any patient when, in his opinion, the same would not prove injurious to the patient or dangerous to the community. The reports of all such probations are required to be rendered to the Board of three Directors at their first ensuing meeting.

From a consideration of these sections as applicable to the facts set out in your letter, it appears to me that on September 4, 1942, the patient Parris was formally discharged from the institution as improved and that his case was not retained for further action. It therefore appears to me that the Board of Directors of the institution would be without jurisdiction to enter any further order in the case. Of course, if the patient should be only at large on probation, a different situation would arise.

It seems to me that the proper course for Mr. Parris to pursue would be to have his sanity restored by jury in the manner provided by statute.

EDUCATIONAL INSTITUTIONS; CASWELL TRAINING SCHOOL; ADMISSION OF
CHILDREN; RETURN OF CHILDREN TAKEN BY PARENTS TO
ANOTHER STATE

15 September, 1943.

Receipt is acknowledged of your letter of September 11 in which you inquire as to whether this office can suggest any method by which you can force the separation from his mother of a boy who has heretofore been an inmate of your institution. You state that the mother of the boy in question secured permission to take her son to Kinston to purchase clothes for him and that the mother promised his immediate return. The boy was not returned and has been taken by the mother to Norfolk, Virginia.

Section 5898 of Michie's North Carolina Code of 1939, Annotated, provides that there shall be received into the Caswell Training School, subject to such rules and regulations as the Board of Directors may adopt, feeble minded and mentally defective persons of any age when, in the judgment of the officer of public welfare and the Board of Directors of the institution, it is deemed advisable. All applications for admission must be approved by the local county welfare officer and the judge of the juvenile court of the county wherein the applicant resides.

Section 5899 enumerates the persons authorized to make the application for the admission of children between the ages of six and twenty-one years. I assume that the boy about which you inquire is less than twenty-one years of age.

It does not seem to me that it would be advisable for you to undertake to secure the return of the boy in question.

It is true that a pupil of your school is supposed to remain in the institution until such pupil is discharged or returned to his or her parents or guardians when, in the judgment of the Directors, it will not be beneficial to the pupil or it will not be for the best interests of the school to retain the pupil therein. This, to my mind, does not mean that the pupil is serving a sentence in your institution but, on the contrary, is placed in the institution in order to secure such care, training and education as the pupil's mentality will permit. Of course, any person advising or soliciting any inmate of your school to escape therefrom is guilty of a criminal offense under the provisions of Section 5912(1) of Michie's Code.

INSANE PERSONS AND INCOMPETENTS; HOSPITALS FOR THE INSANE;
ADMISSION OF FEEBLE MINDED AT STATE HOSPITAL

18 September, 1943.

By your letter of September 17, 1943, you request a ruling with reference to the acceptance of mental defectives by the State Hospital at Raleigh. By mental defectives, I assume you mean persons who are feeble minded, that is, persons who were born mentally defective.

C. S., Section 6185, provides as follows:

"No idiot shall be admitted to any hospital, and for the purpose of this chapter an idiot is defined to be a person born deficient in mind, with the exception that the state hospital at Goldsboro shall admit feeble-minded Negroes, under such rules and regulations as the hospital board and the superintendent may prescribe, in such numbers as the capacity and the appropriations to the hospital will permit."

Although this section provides that no idiot shall be admitted to the hospitals, the statutory definition of an idiot is, "a person born deficient in mind." I do not believe that the term "idiot" should be given a strict construction so as to make the statute apply to idiots only, as contrasted with imbeciles and morons.

In my opinion, the purpose of the section is to exclude from admission to the state hospitals all feeble-minded persons and to restrict admission at the hospitals so that only persons which acquired insanity or other types of mental derangement may be admitted.

EDUCATIONAL INSTITUTIONS; CASWELL TRAINING SCHOOL; OPERATION OF
BUS FOR TRANSPORTATION OF EMPLOYEES AND
CHILDREN OF EMPLOYEES

6 October, 1943.

Sometime ago the question was raised with this office as to the operation of a bus by the Caswell Training School to provide transportation from the Caswell Training School to Kinston for the inmates of the school, for the employees of the school, and members of their family, and of employees' children to and from school in Kinston. At the time the question was raised, this office did not have full information as to the purposes for which the bus was being operated but this information was later furnished to Honorable R. G. Deyton, Assistant Director of the Budget, by the Business Manager of the school. Recently, the Board of Directors of the school adopted a resolution requesting that the institution be allowed to continue the operation of the bus for the purposes above mentioned and the resolution has been referred to this office for consideration.

I assume from the resolution and from the information furnished by the Business Manager of the school that it is necessary for the school to furnish transportation to its employees to and from Kinston and that no transportation is available for the children of the employees to and from school. I further assume that under these conditions it is impossible to retain the necessary employees with which to operate the school unless these particular services are rendered by the school.

Under these conditions, I can see no valid objection to the continued operation of the bus for these purposes, provided sufficient public liability insurance is purchased and carried to cover any personal or property damage incurred as a result of the operation of the bus for the purposes above outlined. I take it for granted that sufficient funds are available from the appropriation made by the General Assembly to the school with which to purchase this insurance. If this is true, application should be made to the Assistant Director of the Budget for the allocation of sufficient funds to meet the cost of the liability insurance.

INSANE PERSONS AND INCOMPETENTS; ADMISSION OF RESIDENTS OF
CHARLOTTE

23 October, 1943.

In your letter of October 20, 1943, you request my opinion concerning the admission of an incompetent to the State Hospital at Morganton. This incompetent is being held in jail in South Carolina on an alleged Selective Service violation. It also appears that this party was released on probation from the State Hospital at Morganton in the Summer of 1942. You inquire if this individual is eligible for hospitalization in any institution in North Carolina and, if so, whether he should be admitted to the Hospital at Raleigh or at Morganton.

It appears from the correspondence which you enclosed with your inquiry that the alleged incompetent is a resident of Charlotte, North Carolina. Such being the case, the incompetent is eligible for hospitalization in an institution in North Carolina. Being from Charlotte, it is my opinion from the correspondence you enclosed relating to the division of the State for the purpose of determining whether an incompetent shall be admitted to the State Hospital at Morganton or the State Hospital at Raleigh, as provided in C. S., Sec. 6153, it is my opinion that he should be admitted to the State Hospital at Morganton.

The fact that this party is being held in jail for an alleged violation of the Selective Service Act is not sufficient to require that he be sent to the criminal insane division of the State Hospital at Raleigh, as it appears that the Federal authorities do not contemplate prosecuting this individual.

(1) ACCEPTANCE OF GIFTS BY A STATE HOSPITAL AND APPLICATION
THEREOF. (2) AUTOPSIES; BY WHAT RELATIVES AUTHORIZED

29 October, 1943.

I have your letter of October 27, in which you advise that your institution has been offered an anonymous gift by some person in Mecklenburg County of \$50.00 per month, to be used by the hospital authorities as they see fit in purchasing various articles for recreation of the patients at the State Hospital at Morganton. You inquire as to whether or not it is permissible to accept this gift and, if accepted, what reports or the like would be necessary.

Consolidated Statutes, Section 6167, provides that, "All moneys and proceeds of property given to any hospitals, and all moneys arising from the sale of any real estate which may be owned by such hospitals, shall be paid into the State Treasury, and all donations

in which there shall be special directions for their application shall be kept as a distinct fund and faithfully applied, as the donor may have directed; . . . an account of the proceeds of all such income and its expenditure shall be carefully kept and published in the report to the General Assembly."

The quotation from the foregoing statute, I believe, fully answers your questions. You should report this matter to the Board of Directors who, under the authority of the statute, would have the right to accept the gift and use it for the purposes for which it is donated, through the medium of a special fund set up in the Treasurer's office as required by the statute.

You request my opinion as to relatives who must give consent to an autopsy.

C. S. 5003(1) provides that, "The right to perform an autopsy upon the dead body of a human being shall be limited to cases specially provided by statute or by direction of the will of the deceased; cases where the coroner or majority of the coroner's jury deem it necessary upon an inquest to have such autopsy; and cases where the husband or wife or *one* of the next of kin or nearest known relative or other person charged by law with the duty of burial, in the order named and as known, shall authorize such examination or autopsy."

You do not state in your letter as to what character of autopsy, and under what circumstances, you have in mind. If this section does not answer your inquiry, please advise me. You are, of course, familiar with the provisions of Chapter 100 of the Session Laws of 1943 which, under certain circumstances, provides for the distribution of dead bodies for the promotion of medical science and the provisions of the statute relating to dead bodies of an inmate of any State Hospital. This section provides that the dead bodies shall be surrendered to the husband or wife of the deceased person, or to any other person within the second degree of consanguinity, upon demand at any time within ten days after the death and upon payment to the board of the actual cost of embalming and preserving the body.

HOSPITALS FOR THE INSANE; DISCHARGE OF PATIENTS; TEMPORARY DISCHARGE BY SUPERINTENDENT

10 November, 1943.

Receipt is acknowledged of your letter of November 9 in which you inquire as to the right of the superintendent of a state hospital to place a patient on probation before action by members of the board of directors.

Section 6215 of Michie's North Carolina Code of 1939, Annotated, provides:

"Each superintendent may, for the space of thirty days, or until the next meeting of the board of three directors provided for in the preceding section, discharge on probation any patient, when in his opinion the same would not prove injurious to the patient or dangerous to the community. A report of all such probations shall be rendered to the said board of three directors at their first ensuing meeting.

This section seems to answer your question.

INSANE PERSONS AND INCOMPETENTS; PERSON INSANE AT THE TIME OF
MOVING INTO THIS STATE.

5 January, 1944.

In your letter of December 31, 1943, you inquire whether Mrs. Mae Cox Sanders is eligible for admission to a State institution in North Carolina. You enclose a report from Mr. J. D. Pegram, Superintendent of Public Welfare of Lee County.

Section 122-39 of the General Statutes of North Carolina (C. S. 6187) provides that no clerk or justice of the peace shall commit to a hospital in this State any person who is not a bona fide citizen and resident of this State. This section further provides that no person who moves into this State from another state while insane shall be deemed a resident or citizen of this State, and no length of residence in this State by such person shall be sufficient to make such person a resident or citizen of this State for the purpose of being admitted to a State hospital.

I am not in a position to advise you whether Mrs. Sanders is a resident of this State. Residence is largely a matter of intention and I have no way of knowing whether Mrs. Sanders came to North Carolina with the intention of making this State her residence, or whether she merely came here for her health or to be with her husband who is employed in a defense plant. The case is further complicated by the fact that even if it be decided that Mrs. Sanders intended to make North Carolina her residence, she might at the time have been mentally deranged. If so, she could not, under the above statute, become a resident of this State. I, of course, do not know her condition at that time.

I regret that I cannot be of any greater assistance to you but in fairness to all concerned I cannot express an opinion on the facts submitted.

HOSPITALS FOR THE INSANE; SELF-COMMITMENTS; MINORS

21 January, 1944.

In your letter of January 20, 1944, you asked my opinion as to the legality of allowing minors to sign self-commitment papers.

Section 35-34 of the General Statutes provides that an inebriate may commit himself to the State Hospital at Raleigh for care and treatment. An inebriate is defined by Section 35-30 as "a person habitually so addicted to alcoholic drinks or narcotic drugs as to be a proper subject for restraint, care, and treatment."

Section 122-62 of the General Statutes provides that "any person believing himself to be of unsound mind, or threatened with insanity, may voluntarily commit himself to the proper hospital."

At no place is the term "person" defined to include only persons who have obtained their majority. The use of the broader term "person" would, it seems, include a minor. However, without deciding whether the statutes were intended to apply to minors, I think that you, as the Superintendent of the State Hospital at Raleigh, would be protected if you accepted a minor upon his signing of self-commitment. The most that could be done, in my opinion, in such

a case, would be that the minor could procure his release by habeas corpus proceedings. I do not think you would incur any liability, either civil or criminal.

As written, the statute would seem to authorize minors to sign commitments but even if construed so as to exclude minors, I think your actions, taken in good faith, would not subject you to any liability where a minor has signed a self-commitment.

HOSPITALS FOR THE INSANE; EMPLOYEES; EXEMPTION FROM JURY DUTY

24 January, 1944.

In your letter of January 21, 1944, you inquire if the officers and employees of the State Hospital at Raleigh are exempt from jury duty.

Section 9-19 of the General Statutes (formerly C. S. 2329) reads in part as follows:

"All . . . officers or employees of a State Hospital for the Insane, . . . shall be exempt from service as jurors."

This statute, in my opinion, is a complete answer to your inquiry.

MUNICIPAL TAXATION; TAXATION OF PERSONS RESIDING ON STATE PROPERTY

27 January, 1944.

You inquire whether employees of the State of North Carolina, residing on State property located within the limits of a municipality, are exempt from the payment of the municipal ad valorem tax on personal property and from the license for automobiles.

In my opinion there is no such exemption. The benefits furnished by the municipality in the form of police and fire protection, etc., are available to the persons to whom you refer, and their automobiles are regularly used upon the streets of the municipality. Thus, in the absence of a specific statutory exemption, I believe that the municipal taxes and fees may be imposed.

AUTHORITY OF STATE HOME AND INDUSTRIAL SCHOOL FOR GIRLS TO ACCEPT PAROLEES FROM THE STATE PRISON

18 March, 1944.

In your letter of March 14, 1944, you inquire if you have authority to accept a white girl, 14 years of age, who has been committed to the State Prison for falsely registering at a public inn and for prostitution, when such girl is to be released to you on parole.

An examination of the statutes relating to the State Home and Industrial School for Girls discloses no provision expressly directing you to accept such parolees nor is any express authority found to parole persons to an institution such as yours in the statutes creating and governing the Parole Commission. However, those same statutes contain no language which would prohibit you from accepting such parolees.

G. S. 134-27 provides:

"Any girl who may come or be brought before any court of the state, and may either have confessed herself guilty or have been convicted of being a habitual drunkard, or being a prostitute, or of frequenting disorderly houses or houses of prostitution, or of vagrancy, or of any other misdemeanor, may be committed by such court for confinement in the institution aforesaid:"

You will note that this section contemplates that the defendant be sent to the institution by the court.

It is my opinion that where a person of the age of 14 has been sent to the State Prison, where it is discovered for the first time that she is only 14, you would be justified in accepting her upon her release on parole by the Parole Commission. While this is not within the strict wording of the section quoted above, it is, in my opinion, within the spirit of the statute.

STATE INSTITUTIONS; HOSPITAL FOR INSANE; RELEASE OF BOND FOR SAFE-KEEPING OF INSANE

30 March, 1944.

I acknowledge receipt of your letter setting out certain facts relating to Aubrey A. Perkins, a former patient in your Institution. I understand that this subject was released from your Institution pursuant to Section 122-69 of the General Statutes of North Carolina, and gave bond in the sum of \$5,000.00, pursuant to said section, a copy of which you enclosed. I further understand that Mr. Perkins desires to terminate this bond, claiming that he was released from your Institution in June 1943.

You inquire as to whether or not you have authority to release Mr. Perkins from the provisions of the bond.

I find no statutory authority to release a person from the provisions of the bond in question and as the bond contains no provision upon which it may be cancelled but is a continuing bond, I do not think that you have any authority to cancel the same. So long as Mr. Perkins remains at large, he is bound by the provisions of the bond. You have no way of knowing whether or not all of the conditions of the bond have been fully complied with. Some of its conditions might have been violated and would not come to your knowledge until a considerable length of time after the breach of the conditions.

If he is re-committed to the Hospital, it may be that some kind of friendly action might be instituted whereby the bond might be cancelled by order of court, but I am not specifically passing upon that question at this time.

HOSPITALS FOR THE INSANE; PERSONS ACQUITTED OF CRIME ON ACCOUNT OF INSANITY; COMMITMENT; DISCHARGE

13 April, 1944.

Receipt is acknowledged of your letter of April 11 in which you raise the question as to the discharge of Mrs. Leah Davis Overby of Henderson, North Carolina, who was committed to your institution

by order signed by Judge Walter J. Bone at the June Term, 1939, of the Superior Court of Vance County.

It appears that Mrs. Overby was originally committed to the State Hospital at Raleigh on August 12, 1937, a few days after she had taken the lives of two of her children and attempted suicide. She was returned to Vance County for the purpose of trial on the charge of murder and was found not guilty by a jury. Thereupon, Judge Bone entered an order recommitting her to the State Hospital at Raleigh to remain there until discharged according to law. Judge Bone found as a fact in the order that Mrs. Overby's mental condition was such as to render her dangerous both to herself and to other persons.

Although it does not definitely appear from the portion of the court record furnished you, I assume that Mrs. Overby was found not guilty by reason of insanity. If this is true, it is my opinion that Mrs. Overby could only be discharged in the manner provided in G. S. 122-86 and that this is what was meant by the term "according to law" as used in the order of Judge Bone committing Mrs. Overby to the State Hospital at Raleigh.

INSANE PERSONS AND INCOMPETENTS; HOSPITALS FOR THE INSANE; AD-
MISSION OF FEEBLE MINDED PERSONS TO STATE
HOSPITAL AT MORGANTON

23 June, 1944.

Receipt is acknowledged of your letter of June 21 in which you inquire as to the right of the State Hospital at Morganton to accept two persons who have been feeble minded all their lives.

G. S. 122-36 provides that any resident of North Carolina who has been legally adjudged to be insane by a clerk of the court or other properly authorized person in accordance with the provisions of Chapter 122 of the General Statutes shall be entitled to immediate admission into the State Hospital at Morganton, the State Hospital at Raleigh, or the State Hospital at Goldsboro, in accordance with the principles of division as to race and residence, as described in the chapter.

G. S. 122-37 provides that no idiot shall be admitted to any hospital and that an idiot is defined to be a person born deficient in mind. There is an exception contained in this section to the effect that the State Hospital at Goldsboro shall admit feeble minded Negroes under such rules and regulations as the hospital board and the superintendent may prescribe, in such numbers as the capacity and appropriations of the hospital will permit.

It is my opinion that it was the purpose of the General Assembly in enacting G. S. 122-37 to exclude from admission to the State Hospital at Morganton all feeble minded persons and to restrict admission to persons with acquired insanity or other types of mental derangement.

MISCELLANEOUS OPINIONS NOT DIGESTED

- (1) NEGROES; STATE AID FOR GRADUATE STUDY; RESIDENTS OF SCHOOL TEACHERS. (2) NORTH CAROLINA COLLEGE FOR NEGROES; USE OF PROPERTY BY DEFENSE AGENCIES

24 August, 1942.

I have your letter of August 19, 1942, in which you ask my opinion as to the residence of a school teacher who has applied for State aid to enable her to pursue graduate study outside the State, and in which you also inquire whether it is permissible for the property of the North Carolina College for Negroes, under any circumstances, to be used by outside agencies in connection with the war effort.

Under Public Laws of 1939, Chapter 65, negroes who are residents of this State and who wish to pursue graduate or professional study of a type not offered in any of the State institutions for Negroes may have their tuition and certain other expenses paid by the Board of Trustees of the North Carolina College for Negroes. You will observe that one of the qualifications for receiving State aid of this character is that the applicant be a resident of the State. Before approving an application, you, and the Board of Trustees, should be thoroughly satisfied that the applicant is a resident of North Carolina, and you would be justified in requiring the applicant to offer proof by affidavit or otherwise to establish this fact.

In an opinion to Dr. F. D. Bluford, President of The Agricultural and Technical College at Greensboro, dated November 3, 1939, the legal principles by which the residence of an applicant for State aid may be determined were set out at considerable length. I am enclosing a copy of this opinion for your guidance. From this opinion you will find that determination of a person's residence involves questions of fact and intention. In order to be a resident a person must actually live in North Carolina, and in addition, he must have a bona fide intention to make this State his home.

The particular applicant in whom you are interested has been teaching in Elizabeth City for one year. You state that her parents live in Virginia and that she spends her summers with them, living in North Carolina only during the school year. It is, of course, possible for a school teacher to establish a legal residence at the place where she teaches, but the fact that she spends her summers and holidays away and with her parents in another state is a strong circumstance indicating the probable absence of a bona fide intent to make North Carolina her permanent home. The fact that she has voted in North Carolina, while indicative, perhaps, of her intentions with respect to her residence, is not determinative for she may have been improperly allowed to vote. I cannot, of course, definitely decide the question for you. It will be necessary for you and the Board of Trustees, on the basis of the evidence offered to you, to satisfy yourselves, as best you can, as to the residence of this applicant.

As to your second question, you will find that by Private Laws of 1925, Chapter 56, the Charter of the North Carolina College for Negroes, the Trustees of this institution have the general power to make rules and regulations for its management. Management would include the supervision of the buildings, equipment and other property of the institution. The North Carolina College for Negroes was created as an educational institution and its property was intended primarily to be used for this purpose. The Board of Trustees, therefore, should not permit any use of it which would have the effect of interfering with the educational program at the College. However, if the property of the institution may be used by the outside agencies connected with the war effort, which you mention in your letter, without damaging or impairing the value of the property and without interfering with the work of the college as an educational institution, I see no reason why this use might not be permitted under appropriate rules and regulations of the Board of Trustees.

EDUCATION; FREE TUITION, ROOM RENT, ETC.; WORLD WAR ORPHANS

22 September, 1942.

I acknowledge receipt of your letter of the 17th inst., in which you state that under the provisions of Chapter 242 of the Public Laws of 1937, as amended, your Institution has been furnishing registration, matriculation and tuition fees free to the orphans of World War Veterans.

You inquire whether or not you can charge such students for laundry and infirmary care fees, based on the average cost per student for these services.

In addition to the services which the various institutions should furnish these World War Orphans provided for in the original Act passed in 1937, Chapter 165 of the Public Laws of 1939 provides that such institutions shall furnish "such other items and institutional services as are embraced within the so-called institutional matriculation fees and other special fees and charges required to be paid as a condition to remaining in said institution and pursuing the course of study selected."

If the charges for room rent and laundry fees are made for services rendered by your Institution to the eligible class of World War orphans, and such charges and fees are necessary to the student remaining in school and pursuing the course of study selected, then you would not have the right to charge such student for room rent, laundry service or infirmary care.

COÖPERATIVE ORGANIZATIONS; CREDIT UNIONS; RIGHT OF DEPOSITORS TO
WITHDRAW DEPOSITS BY BANK DRAFT

10 October, 1942.

You inquire as to whether a credit union may legally allow its depositors to withdraw deposits [from a credit union] by bank draft instead of by the usual method of applying to the Treasurer of the Credit Union in person.

Section 5211(11) of Michie's North Carolina Code of 1939 Annotated provides that the time of the filing of the certificate, the incorporators shall adopt by-laws which shall provide the conditions upon which deposits may be received and withdrawn.

Section 5217 provides that a credit union may receive on deposit the savings of its members and also non-members in such amounts and upon such terms as the Board of Directors may determine and the by-laws shall provide. It might be argued that these statutes are broad enough to authorize credit unions to allow their depositors to withdraw deposits from such credit unions by means of bank drafts instead of by the usual method of applying to the Treasurer of the Credit Union in person. However, to my mind, if this construction should be given to the Credit Union Act, it would have the effect of placing credit unions in the banking business without requiring a compliance with the banking laws. I do not believe it was the intention of the Legislature in providing for the establishment of credit unions to sanction such results. It does not seem possible to me that the Legislature could have intended that a person depositing funds in a credit union could use such deposit account as a checking account in the strict sense of the word.

Under these circumstances, I could not advise that a credit union, in the absence of specific legislative authority, would have the right to, in effect, make its deposit account a checking account by the use of bank drafts.

STATE INSTITUTIONS; CONVEYANCE OF RIGHT-OF-WAY; APPROVAL OF LEASE

18 November, 1942.

I acknowledge receipt of your letter of the 17th inst., in which you, as Chairman of the Board of Trustees of the Negro Agricultural and Technical College of North Carolina, state that the United States Government desires to obtain a right-of-way for a railroad track across the College property, and you further state that the Board of Trustees is willing to lease the property to the Federal Government.

You inquire whether or not, in the absence of express authority in the College charter, the Board of Trustees of the College has authority to authorize its officers to lease this right-of-way to the United States Government, or should such lease be approved by the Council of State.

In the absence of express authority in your College charter to executive conveyances, I am of the opinion that this lease should be approved by the Council of State and executed by the Governor in the name of the State and attested by the Secretary of State.

I refer you to Section 7524 of the Consolidated Statutes, which authorizes the "Governor to execute deeds of State lands held for institutions," and Section 7524(a) "method of alienation and real property held by any State agency," and 7524(b) "execution; signature; attestation; seal."

PROFESSIONAL NURSING; TEMPORARY LICENSE TO PRACTICE DURING
WAR EMERGENCY

1 December, 1942.

I acknowledge receipt of your letter of November 27 in which you state that due to the 'great demand for graduate nurses, particularly in defense areas, the North Carolina Board of Nurse Examiners has agreed that nurses who present evidence that they are qualified to practice, and come to North Carolina with their husbands who are in the armed forces, may be allowed to practice for the duration on condition that such applicant file a completed application showing that she is qualified to practice according to Chapter 87 of the Public Laws of 1925, as amended, entitled "An Act relating to Professional Nursing," and further upon such applicant paying the license fee of \$25.00 required by Section 10 of said Act. You further state that it is the intention of your Board to return this fee to the applicant if she ceases to practice her profession within six months after being licensed.

You inquire whether or not your Board has authority under said Act to enter into an agreement and license applicants upon the terms and conditions above set out, and in your letter.

Section 10½ of said Act provides:

"That the Board of Nurse Examiners may make reasonable rules of comity allowing registered nurses from other States to do temporary nursing in this State."

I am of the opinion that under said section, the Board of Nurse Examiners has authority to grant nurses the right to practice in this State upon the terms and conditions above set out and as suggested in your letter of the 27th.

PUBLIC HEALTH; GRANTING LIMITED LICENSES TO NONRESIDENT DOCTORS
IN EMERGENCIES; C. S. 6616-17

5 December, 1942.

I acknowledge receipt of your letter of November 28, in which you state that there is danger of a serious shortage in doctors to properly serve those needing medical attention in the State in view of the large number of doctors who are being inducted into the military service.

You inquire whether or not the Board of Medical Examiners, under Section 6616 of the Medical Practice Act, has authority to issue "limited license" to a doctor from New Jersey, for example, or even a refugee physician, to locate in a certain section in North Carolina and practice within the described territory until the community's resident physician returns from the war.

I am inclined to the opinion that under the combined Sections 6616 and 6617, your Board may take a broad view of the authority given it under Chapter 110 of the Consolidated Statutes and issue a license as suggested in your letter.

I call your attention to the fact that Section 6616 specifically provides that such person making application must reside in the ter

ritory which he proposes to serve at the time he makes application. There is considerable doubt in my mind as to whether or not Section 6616 is intended to permit limited license to be issued to a nonresident physician. There can be no question but what you could license such physician under Section 6617.

I agree with you that a liberal construction should be placed upon these sections to enable your Board to take care of, in so far as it can, the problem of providing proper medical attention to the citizens of the State while so many of our fine doctors are being taken in the military service, most of whom will expect to return to their respective communities when the war is over.

AUTOMOBILES; CAR-SHARING PLANS; LIABILITY OF DRIVER FOR INJURIES TO PASSENGERS; LIABILITY FOR FOR HIRE LICENSE

9 January, 1943.

I have your letter of January 7, 1943, in which you inquire as to certain legal consequences arising from car-sharing plans which have been put into operation as a result of the present tire and gasoline shortages.

First, you have requested my opinion as to the proper answer, under the laws of North Carolina, to the following question: "Suppose I am carrying a passenger and have an accident. Am I liable for his injuries?"

As is pointed out in the Memorandum by Mr. Thomas E. Harris under the subject, "Legal Consequences of the Car-Sharing Plans," the possible legal classifications which might describe the relationship between the owner-driver and passengers under a car-sharing plan are: (1) host and guests, (2) operator and passengers for hire, and (3) parties to a joint enterprise. It should be remembered that car-sharing plans may vary greatly. It will be impossible to classify all of them under any one legal relationship, and, in many cases, if litigation should arise, the nature of the arrangement will have to be determined by a jury. There have been no decisions of the Supreme Court of North Carolina which furnish exact rules for the classification of the relationship of parties to car-sharing plans.

Referring to a joint enterprise, our Court said in *Charnock v. Reusing Light and Refrigerating Company*, 202 N. C. 105:

"A common enterprise in riding is not enough; the circumstances must be such as to show that the plaintiff and the driver had such control over the car as to be substantially in joint possession of it. *Albritton v. Hill*, 190 N. C. 429."

A strict application of this rule would exclude the ordinary car-sharing plan from the category of a joint enterprise. Although the owner of the car may receive a contribution in money from passengers, he ordinarily retains complete control over the car and the right to possession of it. However, if the agreement between the owner and driver of a car and the passengers is such as to make them parties to a joint enterprise, the rule in this State apparently is that negligence of the driver will be imputed to the passengers, who will, therefore,

be precluded from recovering damages from the driver. In *Albritton v. Hill*, *supra*, the plaintiffs, who were passengers in an automobile, were allowed to recover damages for injuries on account of the negligence of the driver. The driver relied upon the defense of a joint enterprise, and the Court said at page 431:

"We have also held that negligence on the part of the driver of a car will not ordinarily be imputed to another occupant unless such other occupant is the owner of the car or has some kind of control over the driver. See cases cited in the concurring opinion in *Williams v. R. R.*, 187 N. C. 355. To avoid the effect of this rule the defendant seeks to bring his case within the principle applicable to persons engaged in a joint enterprise. This position raises the direct question whether the deceased and the defendant had embarked upon a common purpose. If they had, the plaintiff would be precluded from recovering."

North Carolina has not, as have some states, enacted a statute limiting the liability of the operator of an automobile for injuries to passengers who are guests to cases of gross or wanton negligence. The rule in this State is that a driver is liable to a guest if he is guilty of ordinary negligence, that is failure to exercise ordinary or reasonable care under the circumstances. *White v. McCabe*, 208 N. C. 301. The decisions of our Supreme Court have not made any distinction between guests and other passengers in a private car who are carried for compensation. Passengers for hire who are transported by a common carrier may recover for injuries received as a result of the negligence of the carrier, and the common carrier is required to observe even stricter standards of care than the ordinary person. *Perry v. Sykes*, 215 N. C. 39; Note (1939) 17 N. C. L. Rev., 453. The driver of a private automobile who receives compensation from passengers under a car-sharing agreement might not be held to the strict accountability of a common carrier, although the question has not been decided; but in any event the extent of his liability would be as great as that of a host to a guest passenger. Therefore, the driver would be liable in case of ordinary negligence to both passengers for hire and passengers transported gratuitously.

In the limited time available for our investigation, no decisions of the North Carolina Supreme Court which would determine the validity of an agreement exempting the driver of an automobile from liability to passengers for injuries resulting from negligent operation of the vehicle have been found. Drivers of automobiles may deem it advisable to have passengers under a car-sharing plan sign such an agreement; but, upon the basis of the authorities consulted, I am not able to give any assurance that such an agreement would not be held void as against public policy.

The second question which you have submitted is as follows: "Do I have to get a special license, either for my car or for myself, if I accept payment?"

Under Section 51 of Chapter 407 of the Public Laws of 1937, as amended, operators of "For Hire Passenger Vehicles" are required to pay the annual fees for registration and licensing at a higher rate

than is required of owners of private passenger vehicles. "For Hire Passenger Vehicles" are defined in Section 2 of Chapter 407 of the Public Laws of 1937, as amended, as:

"Passenger motor vehicles engaged in the business of transporting passengers for compensation; but this classification shall not include motor vehicles of seven passenger capacity or less operated by the owner where the cost of operation is shared by neighbor fellow workmen between their homes and the place of regular daily employment, when operated for not more than two trips each way per day."

Under this definition, the owner of an automobile who is a party to a car-sharing agreement will not have to have a special For Hire License if he carries his neighbors to and from work, carries no more than seven passengers, makes no more than two trips each way daily, and if the compensation which he receives is not profit but merely a contribution toward payment of actual expenses.

REPORTING INCOME OF MINOR FOR INCOME TAX PURPOSES

5 February, 1943.

You have requested my opinion upon the following matter.

A minor earns, during a taxable year, income of over \$1,000 for his personal services, and turns over a portion of this income to his father. The minor has no other income. You inquire whether a return of this income should be made by the minor or by his father in reporting this income to (a) the federal government and (b) the State of North Carolina. Needless to say, I cannot make an authoritative ruling on any question of federal law; however, I am glad to give you my interpretation of the federal law on the subject under consideration purely as a personal and unofficial opinion.

A. The return to the federal government.

(1) *Income from personal service.*—Under Reg. 103, Sec. 19.51-3, as amended (see Par. 17,103 of Prentice-Hall 1943 Federal Tax Service) the income of a minor representing earnings for the minor's personal services are includible in the return of the parent if the law of the State of residence provides that the earnings by a minor for his personal services belong to the parent, and if the minor is not emancipated. It is well established in North Carolina that a parent is entitled to the earnings of his minor child for personal services so long as the child is legally in his custody or under his control and is not emancipated. *Shipp v. United Stage Lines*, 192 N. C. 475; *White v. City of Charlotte*, 212 N. C. 539; *White v. Holding*, 217 N. C. 329. Thus, in the situation you state, the father would be required under the federal law to include his son's income from personal services in his, the father's, return if the minor was not emancipated. The question of what constitutes emancipation is considered below.

(2) *Income other than that from personal services.*—As to this type of income, the federal regulation cited above requires the minor to make a return in his own name if the income is above the amounts

specified in the Revenue Act as requiring the filing of a return. Reg. 103, Sec. 19.51-3; Prentice-Hall Federal Tax Service, Par. 17,103, 17,104.

It is important to note that the regulation cited above was promulgated prior to the 1942 Revenue Act and does not reflect the changes made by Sections 131(c)(1) and 136(a) of that Act. In Section 51, Internal Revenue Code, however, the changes made by these sections of the 1942 Revenue Act relate to the personal exemptions to which taxpayers are entitled and do not affect the fundamental principles regarding the filing of returns of the income of minors as set forth in the cited regulation.

B. The return to the State of North Carolina.

The Revenue Act of 1939, as amended, contains no specific provision relating to the filing of returns of the income of minors. Further, the Commissioner of Revenue has not promulgated any regulation dealing with this matter. However, the uniform administrative practice followed by the Department of Revenue since the income tax was first levied in this State has differed from the federal rule referred to above. Under that practice the minor has been regarded as a taxpayer separate and apart from his parent, with respect to all kinds of income. A minor's net income during the taxable year, whether it be from personal services or from other sources, has been considered nontaxable unless it exceeded the personal exemption to which the minor is entitled. No difference is made with respect to the personal exemptions of a minor because of the mere fact of his minority. In other words, the personal exemptions of a minor are determined in the same manner as if he were of age.

If the net income of a minor from all sources exceeded \$1,000.00 during the taxable year, the Department has required a return to be filed by the parent or guardian of the minor of the minor's income, and a payment of the tax thereon. Where the net income of a minor during the taxable year has not exceeded \$1,000.00, and the minor has turned over a part of that income to his parents, the Department has not required the parent to include such income in his own return.

Thus, the practice of the Department of Revenue has not been in harmony with the federal law or the law of many other states on this matter. So far as I have been able to determine the question of the proper method for reporting the income of a minor has not been heretofore ruled upon by the Attorney General.

I am of the opinion that the administrative practice does not have a sound legal basis. In view of the fact that in this State a parent is entitled to the earnings of his unemancipated minor child from personal services, the following rules should govern the returns of a minor's income:

(1) If a minor who is not emancipated earns income of any amount during the taxable year from his personal services, such income must be reported by the parent of such minor as a portion of the income

of said parent, since the parent is legally entitled to such income by law; no additional personal exemption is allowed the parent in reporting this income.

(2) If a minor who is emancipated earns a net income during the taxable year from his personal services in excess of \$1,000.00 he must file a return of said income.

(3) If a minor, whether emancipated or not, receives net income during the taxable year in excess of \$1,000.00 from sources other than personal services, such as income from dividends, interest, and trust income, such income must be reported by said minor.

Emancipation of a minor may be either express or implied. "An express emancipation takes place when the parent freely and voluntarily agrees with his child, who is able to take care of and provide for itself, that it may leave home, earn its own living, and do as it pleases with its earnings. . . . An implied emancipation results when the parent, without any express agreement, impliedly consents by his acts and conduct that the child may have its own time and control of its earnings, or such consent is inferred from or shown by circumstances." 39 American Jurisprudence, p. 703; *Jolley v. Telegraph Company*, 204 N. C. 136.

SENATE BILL NO. 154, CONFERRING EMERGENCY WAR POWERS UPON
THE GOVERNOR TO PROTECT THE LIFE AND PROPERTY OF THE
PEOPLE OF THE STATE AND PROMOTE THE SECURITY OF
THE STATE AND NATION DURING THE EXISTING
STATE OF WAR

2 March, 1943.

You inquire as to whether, in my opinion, the provisions of Senate Bill No. 154, conferring emergency war powers upon the Governor, would, if enacted into law, be broad enough to cover wilful and deliberate violations of practice blackout regulations.

Section 2 of Senate Bill No. 154, as introduced, gives the Governor, with the approval of the Council of State, the right to formulate and execute plans for the organization and coördination of civilian defense in the State in reasonable conformity with the program of civilian defense as promulgated from time to time by the Office of Civilian Defense of the Federal Government, and to order and carry out blackouts, radio silences, evacuations, and all other precautionary measures against air raids or other forms of enemy action and suppress or otherwise control any activity which may aid or assist the enemy.

Section 3 of the Act provides that all orders, rules, and regulations promulgated by the Governor pursuant to the Act shall have the full force and effect of law from and after the date of the filing of a duly authenticated copy thereof in the Office of the Secretary of State, and that a violation of any such order, rule or regulations, unless otherwise provided therein, shall be deemed a misdemeanor and punishable as such. This Section further provides that all laws, ordinances, rules and regulations, in so far as they are inconsistent with the provisions

of this Act, or of any rule, order or regulation made pursuant to the Act, shall be suspended during the period of time and to the extent that such conflict exists.

It is my opinion that the provisions of Senate Bill No. 154, if enacted into law, would be broad enough to cover the wilful and deliberate violation of a practice blackout order or regulation if adopted in the manner provided for in the Act.

PRISONERS; RIGHTS TO HIRE OUT TO PRIVATE EMPLOYMENT AS FARM LABOR

20 March, 1943.

In response to your inquiry relative to authority to hire out prisoners to farmers to meet the serious farm problem now existing with reference to farm labor, I wish to advise you as follows:

There are two general classes of prisoners which may be hired out to farmers and others to be used in private employment.

The first class is provided for in Section 1356 of the Consolidated Statutes, which reads as follows:

"The board of commissioners of the several counties within their respective jurisdictions, or such other county authorities therein as may be established, and the mayor and intendant of the several cities and towns of the State, have power to provide under such rules and regulations as they may deem best for the employment on the public streets, public highways, public works, or other labor for individuals or corporations, of all persons imprisoned in the jails of their respective counties, cities and towns, upon conviction of any crime or misdemeanor, or who may be committed to jail for failure to enter into bond for keeping the peace or for good behavior, and who fail to pay all of the cost which they are adjudged to pay, or to give good and sufficient security therefor: Provided, such prisoner or convict shall not be detained beyond the time fixed by the judgment of the court. The amount realized from hiring out such persons shall be credited to them for the fine and bill of cost in all cases of conviction. It is unlawful to farm out any such convicted person who may be imprisoned . . . , unless the court before whom the trial is had shall in its judgment so authorize."

The authority contained in Section 1356 to hire out prisoners is restricted to only those who are committed to jail, and does not include those prisoners who are assigned to the State Highway and Public Works Commission, as Section 7748(h) states that the courts sentencing defendants to imprisonment with hard labor shall sentence such prisoners to jail, to be assigned to work under the State Highway and Public Works Commission, and the clerks of the several courts in which such sentences are pronounced shall notify the superintendent of the nearest Highway prison camp, or such other agent of the Commission as he may be advised by them is the proper person to receive such notice, and the agent of the Commission shall take such prisoners in custody and deliver them to such camp or station as the Commission shall designate. This section requires all prisoners who are to be punished by hard labor to be assigned to the State Highway and Public Works Commission.

However, Section 7716 of the Consolidated Statutes provides in part:

"No woman prisoner, however, shall be assigned to work under the supervision of the State Highway and Public Works Commission whose term of imprisonment is less than six months, or who is under eighteen years of age. No male person shall be assigned to labor under the supervision of the State Highway and Public Works Commission whose term of imprisonment as fixed by the judgment of the court is less than thirty days."

I am, therefore, of the opinion that the authority contained in Section 1356, authorizing the hiring out of prisoners committed to jail, is limited to male persons who have received sentences of less than thirty days, and to women prisoners who have received sentences of less than six months, or who are under eighteen years of age.

The second class of prisoners which may be hired out have been sentenced to work under the supervision of the State Highway and Public Works Commission and any contract for the use of such prisoners must be made with such Commission.

However, H. B. 575, passed by the recent Legislature, entitled "A bill to be entitled an Act to authorize the State Highway and Public Works Commission to furnish prison labor for farm work in certain emergencies," provides that when the Governor shall find and declare that an extraordinary emergency exists due to the lack of available labor in producing and harvesting food and feed crops, the State Highway and Public Works Commission might make such prisoners available for assistance to the farmers in such production and harvesting of food and feed crops. This bill goes further and sets up the machinery for the hiring out of such prisoners.

BLACKOUTS; MUNICIPAL ORDINANCES; ENTERING HOME OR BUSINESS ESTABLISHMENT TO EXTINGUISH LIGHTS

27 March, 1943.

The North Carolina Office of Civilian Defense has requested an opinion from this office as to whether an officer on duty during a blackout has authority to enter a home or a business establishment to extinguish lights if the owner cannot be located.

There is no statute in this State prescribing specific regulations to be observed during blackouts or setting forth the powers and duties of officers on duty during a blackout. Specific regulations of this character must be promulgated by the Governor under the War Powers Act, passed at the recent Session of the Legislature, or by municipal ordinances.

Paragraph (b) of Section 2 of Senate Bill No. 154, the War Powers Act, provides that the Governor shall have authority to:

"Order and carry out blackouts, radio silences, evacuations and all other precautionary measures against air raids or other forms of enemy action, and suppress or otherwise control any activity which may aid or assist the enemy."

The authority of municipalities to enact ordinances regulating blackouts must be found in either C. S., Section 2673 or C. S., Section 2787. Under C. S., Section 2673, the commissioners of a city may enact ordinances, rules and regulations for the better government of the city, not inconsistent with the law of the land, as they may deem necessary. C. S., Section 2787, outlines the various powers of a municipal corporation in great detail, and lists among other things the power to supervise, regulate or suppress in the interest of public morals, public recreation, amusements and entertainments, and to define, prohibit, abate or suppress all things detrimental to the health, morals, comfort, safety, convenience and welfare of the people and all nuisances and causes thereof, and to pass such ordinances as are expedient for maintaining and promoting the peace, good government and welfare of the city and the morals and happiness of its citizens and for the performance of all municipal functions.

Until suitable regulations are prescribed by the Governor or provided by municipal ordinances, no regulations relating to blackouts of any sort could be enforced. If such a regulation should be prescribed by the Governor or enacted in a municipal ordinance, it would be sufficient to authorize an officer on duty to enter homes or business establishments during actual air raids, provided that such regulation would be considered reasonable under the statutes above referred to. Great difficulty is encountered in undertaking to predict with any degree of certainty what a court would consider reasonable or unreasonable for reasonableness is a matter of judgment and the judgment of individuals differ. There is no doubt whatever, in my mind, that a regulation authorizing an officer to enter premises to extinguish lights during an actual air raid would be considered reasonable. If such power could not be granted to the officers on duty during an air raid, no blackout could be successful. A few lights left burning during an air raid could greatly endanger life and property.

When we come to consider the question of practice blackouts, a different question might arise. It is true that in order to stage a successful blackout during an actual air raid, practice blackouts are necessary. It further appears to me that blackouts may be useful and of military necessity at times when air raids are not actually in progress as a preventive measure. On the other hand, the individual and property rights of persons must be considered and respected except in cases of absolute necessity.

I have very grave doubts as to whether the courts would uphold the action of an officer on duty during a practice blackout in entering a home or business establishment to extinguish lights if the owner cannot be located.

ARCHITECTURAL EXAMINATION AND REGISTRATION BOARD; REMISSION OF
LICENSE FEE; MEMBERS OF U. S. ARMED FORCES

12 April, 1943.

I acknowledge receipt of your letter of the 10th inst., in which you refer to my letter to you of February 15, relative to the above subject.

H. B. No. 476, enacted in law by the recent Legislature, Section 2, provides:

"That any person entering into the armed forces of the United States or in the Merchant Marine shall be during the period of such service exempt from paying any license fees to any licensing board or commission or to the State of North Carolina in which the payment of such license fees is by law required as a condition to the continuance of the privilege to engage in any trade or profession. Such a person upon being discharged from such service shall have all the rights and privileges to engage in such profession upon payment of such fees as may thereafter become due, to the same extent as though such activity had not been suspended during the period of such service."

It can be seen from this section that members of the United States armed forces or Merchant Marine are exempt from paying license fees required by your Board, and that upon such person being discharged from the military service, he shall have all the rights and privileges to again engage in the profession governed by your Board, upon payment of such fees as may thereafter become due.

AD VALOREM TAXATION; GARNISHMENT OF WAGES OF EMPLOYEES OF THE
STATE AND ITS INSTITUTIONS

23 April, 1943.

You inquire as to whether the wages of the employees of your Institution would be subject to garnishment for ad valorem taxes due a county or municipality.

Subsection (d) of Section 1713 of the Machinery Act of 1939, as amended, provides that a tax collector may attach not more than ten per cent of the wages or other compensation for personal services for failure to pay taxes.

Subsection (e) of the same section provides:

"Tax collectors may proceed against the wages, salary or other compensation of officials and employees of this State and its agencies and instrumentalities and officials and employees of political subdivisions of this State and their agencies and instrumentalities in the manner provided by subsection (d) of this section. In such cases the notice shall be served upon the treasurer of the employing government or agency or instrumentality, and, if there is no treasurer, then upon the chief financial officer thereof. In the case of notices served upon the State Treasurer, the notice shall state the place and character of the taxpayer's employment."

The above provisions of the statute, in my opinion, would give you the authority, upon proper notice being served, to withhold from the employee's wages an amount sufficient to pay the employee's taxes, but, in no event to exceed ten per cent of the wages or other compensation due such employee.

INSTITUTE OF GOVERNMENT; RIGHT OF COUNTIES, CITIES AND TOWNS TO
SUBSCRIBE FOR MEMBERSHIP

2 July, 1943.

Receipt is acknowledged of your letter of July 1, in which you ask the opinion of this office as to whether or not counties, cities and towns in this State have the authority to pay membership fees to the Institute of Government for the services which are rendered by the Institute of Government to them.

You explain in your letter that these fees are uniform and are graduated in accordance with the population of the member units on the theory and fact that the larger the unit, the more complex its business and the greater the benefit received from your service. In your letter you set out the nature and character of the services rendered by the Institute of Government to counties, cities and towns.

I think it is pretty generally understood throughout the State that the Institute of Government has, during its existence, rendered a service of incalculable value to our counties, cities and towns in carrying on the functions and duties which, under the law, they are required to perform. To mention only one service with which I have been thoroughly acquainted, the listing, assessing and collection of taxes, I will say that the aid given by the Institute of Government to the taxing authorities in our local units of government has been of tremendous value. Issuance and use of the handbooks on these subjects has given the local authorities ready reference to the law and practices and procedures, which otherwise it would have been impracticable for them to get.

I realize fully the extent and value of the service rendered to local governments during sessions of the General Assembly, in which Legislative Bulletins are provided for officials in counties, cities and towns. This information enables them to keep in close touch with legislation which might directly affect their units of government, and doubtless saves time and a great deal of expense which otherwise they might have to go to secure this information. I mention only these two prominent features of the many activities of the Institute of Government in pointing out that your services are strictly governmental in character in aid of the efficient conduct of governmental affairs by these local units.

I understand now that the Institute of Government is operated as one of the functions of the University of North Carolina, for which appropriations are made by the General Assembly. In the budget estimate submitted and approved by the General Assembly, it is contemplated that a substantial part of the revenues supporting the activities of the Institute of Government should continue to come from the sums paid by counties, cities and towns for the services to them provided by the Institute of Government. This, I think, is legislative recognition of the propriety and necessity for such expenditures by our counties, cities and towns.

After giving this matter careful consideration, I am of the opinion that counties, cities and towns are legally authorized to pay reason-

able dues or membership fees in the Institute of Government, as a means of helping to provide for the cost of the services to them provided from this source. It is understood, of course, that the funds to be used for this purpose would not require the levy of any special tax.

COSTS; PRISONERS; TRANSPORTATION; SECTION 1347 MICHIE'S CODE

29 July, 1943.

You inquire as to whether in my opinion Section 1347 of Michie's North Carolina Code of 1939, Annotated, authorizes the inclusion in the bill of costs in a criminal action tried before the mayor of a city or town of a fee of five cents per mile for mileage necessary in transporting a prisoner to jail.

Section 1347 provides:

"Every person committed by lawful authority, for any criminal offense or misdemeanor, shall bear all reasonable charges for guarding and carrying him to jail, and also for his support therein until released; and all the estate which such person possessed at the time of committing the offense shall be subjected to the payment of such charges and other prison fees, in preference to all other debts and demands. If there is no visible estate whereon to levy such fees and charges, the amount shall be paid by the county."

From an inspection of the language used in this section, it is my opinion that the General Assembly had in mind fixing the civil liability as to the items mentioned therein rather than an authorization to include such items in the bill of costs.

AIR RAID WARDENS; MUNICIPALITIES; RIGHT TO CONTROL
SMOKING IN THEATERS

3 September, 1943.

I have a copy of your letter of September 1, 1943, to Mr. Sam H. Kelley, Cheif Air Raid Warden, Waynesville, North Carolina, and a deputy sheriff, asking for information as to what could be done with reference to smoking and overcrowding in theaters. Mr. Kelley is particularly concerned about this on account of the danger incident to these conditions during air raid warnings.

I note that Mr. Kelley had called upon the Mayor of Waynesville for advice and was told that there is no law on the subject and that all that could be done would be to warn the people.

It would be competent for the town to adopt an ordinance which would regulate smoking and over-crowding in theaters. If the Town of Waynesville has no ordinance at this time on the subject, it would be within the power of the municipality to adopt an ordinance intended for this purpose. C. S. 2786, subsection (24), provides that towns have the authority to regulate, restrict and prohibit theaters, carnivals, circuses, shows, etc. This section would provide ample authority for the enactment of reasonable ordinances to control the situation to which Mr. Kelley refers. The enactment of such an ordinance would, of course, be within the sound discretion of the municipal authorities.

WAR BONUS; APPLICATION TO N. C. LICENSING BOARD FOR CONTRACTORS

18 October, 1943.

I have your letter of October 14, in which you inquire as to whether or not the North Carolina Licensing Board for Contractors can declare a war bonus commensurate with that granted other State employees by the General Assembly of 1943. You refer to Section 4 of Chapter 318 of the Public Laws of 1925, as amended by Chapter 257 of the Public Laws of 1941, which provides in Section 4 that the Board is authorized to employ a full-time Secretary-Treasurer whose salary shall not exceed \$3,600.00 per annum, and such other assistants and make such other expenditures as may be necessary to the proper carrying out of the provisions of this Act.

I regret to state that Chapter 530 of the Session Laws of 1943, providing the war bonus for State employees, has no application to the employees of your Board, as it affects only the State employees for whom appropriations are made in the Appropriations Act and special funds operated out of Federal or private funds. As the funds of the Licensing Board for Contractors do not become State funds and are not deposited in the State Treasury, the bonus provisions of the Appropriations Act have no application thereto.

Under the authority of Chapter 257 of the Session Laws of 1943, the Licensing Board could provide such salaries for assistants to the Secretary-Treasurer as might considered appropriate, but, as the law provides that the salary of the Secretary-Treasurer shall not exceed \$3,600.00, I regret to state that, in my opinion, the Board would have no authority to pay a salary in excess of that amount.

AD VALOREM TAXES; INTEREST ON TAX SALE CERTIFICATES

26 October, 1943.

Receipt is acknowledged of your letter of October 25, in which you refer to and quote Section 1403(5) of the Machinery Act of 1939, as amended. You also refer to Section 1716 of the Machinery Act which provides a rate of interest of eight per cent per annum as to taxes, penalties and costs included in a tax sale certificate which, as you state, may include taxes on personal property, poll and dog taxes, as well as taxes against real estate.

You raise the question as to whether or not these penalty statutes are in conflict with Article V, Section 3, of the Constitution, by reason of the fact that the owner of personal property also owns real estate, when the penalty on personal property taxes is included in the tax sale certificate at the rate of eight per cent; whereas, if the owner of personal property owned no real estate, the penalty would be one-half per cent per month or fraction thereof, as provided by Section 1403(5).

This situation does result in some difference in the penalties which may accrue on the taxes of the owner of personal property, depending upon whether or not he is delinquent in both real and personal

property taxes or only delinquent in personal property taxes, but I am inclined to believe that the courts would not declare either of the sections unconstitutional as they apply alike to all persons who happen to be in the same category. I find no case in North Carolina in which the question is discussed. Based upon the presumption of their constitutionality, which is indulged in in considering questions of this kind, and the requirement that administrative officers do not have the power to declare an act of the legislature unconstitutional (*Bickett v. Tax Commission*, 177 N. C. 433), I could not advise that the statutes should be regarded as unconstitutional.

You also inquire as to whether or not a taxing unit has a right to charge eight per cent interest where it neither issues a tax sale certificate nor makes a notation of sale upon the original tax receipts or accounts.

Section 1716(b) of the Machinery Act provides that each taxing unit shall determine whether or not it is necessary to issue certificates of tax sale, and that, in case the governing body determines it is not necessary to issue the tax sale certificates, they may be dispensed with and the collector ordered to stamp the original tax receipts or accounts in the manner provided therein. This section further provides, "and in either case interest at the rate of eight per cent (8%) per annum shall accrue on the amount bid by said unit from the date of sale."

I find no provision in the statute for the charge of an eight per cent penalty except in cases of the issuance of tax sale certificates as provided in Section 1403(5) and in Section 1716(b). As penalty statutes are strictly construed against the imposition of the penalty, I am of the opinion that the eight per cent penalties could not be collected except in such cases, and that where no certificate of tax sale has been issued nor any notation made as provided by law, the tax penalty would remain on the basis of one-half per cent per month, or fraction thereof, and could not be collected on the eight per cent basis.

DEFENSE PLANT CORPORATION (PIPE LINE FROM GREENSBORO TO
RICHMOND)

28 March, 1944.

You state that the Defense Plant Corporation constructed an eight inch pipe line from Greensboro to Richmond for the transportation of petroleum products. This line was completed and in operation prior to January 1, 1944. The pipe is placed in the ground at an average of three feet in depth. The soil is replaced over the pipe on a right-of-way which the Corporation has purchased from various land owners.

Section 10 of the Reconstruction Finance Corporation Act, as amended, provides that any "real property" of the Defense Plant Corporation shall be subject to "state, territorial, county, municipal, or local taxation to the same extent according to its value as other real property is taxed." The question therefore arises whether the pipe line is properly to be classed as real property. If so, it is subject to ad valorem taxation.

Section 2(30) of the Machinery Act of 1939, as amended, defines real property subject to taxation in this State as follows:

"(30) The terms 'real property,' 'real estate,' 'land,' 'tract,' or 'lot' mean and include not only the land itself, but also buildings, structures, improvements and permanent fixtures thereon, and all rights and privileges belonging or in any wise appertaining thereto, . . ."

In 61 C. J., page 190, the following statement appears:

"Pipe line underlying the lands of several proprietors, for example, as used in conveying petroleum, has been held taxable as real estate." Authority cited is *Tidewater Pipe Line Co. v. Berry*, 21 A. 490, 53 New Jersey Law 212. See also *City of Bayonne v. Vacuum Oil Co.*, 56 N. J. L. J. 72.

In *Tidewater Pipe Co. v. Berry*, *supra*, the New Jersey Court held that a foreign corporation owning a pipe line for carrying petroleum which is laid underground under a grant by the owner of the fee, is taxable for the pipe line as real estate in the township where it is located, under the definition of real estate contained in the taxing statute. This definition defined real estate to include "all lands, all waterpower thereon or appurtenant thereto, and all buildings or erections thereon or affixed to the same, trees and underwood growing thereon, and all mines, quarries, peat, and marl beds, and all fisheries."

Although there is some difference of opinion upon the question (see 26 R. C. L., Sec. 162), it is my opinion that the pipe line is realty and is to be taxed as such. It is permanently placed in the land and is a part of the land, or a permanent fixture thereon.

Reinforcing this opinion is the fact that certain pipes and gas mains have always been treated as real property under the taxing statute.

EDUCATION; CHILDREN OF WORLD WAR VETERANS; EFFECT OF MARRIAGE ON ELIGIBILITY FOR BENEFITS

29 March, 1944.

Receipt is acknowledged of your letter of March 24 in which you raise certain questions relative to the eligibility of children of World War veterans to the benefits provided for in Chapter 242 of the Public Laws of 1937, as amended, and as to travel allowance and subsistence allowed members of the governing board of the State's institutions.

Your question is whether a student who is receiving free tuition, room, board, etc., as the child of a World War veteran under the provisions of Chapter 242 of the Public Laws of 1937, as amended, may continue to receive such benefits after marriage.

The provisions of Chapter 242 of the Public Laws of 1937, as amended, are contained in Sections 116-145 and 116-148 of the General Statutes of North Carolina. From an inspection of these sections, there does not appear to be any direct prohibition against a married child of a veteran, who would otherwise be eligible, receiving the benefits provided for in these sections. However, it appears in Section 116-145 that applicants desiring to share certain of the benefits provided for must submit a

certificate of financial need, duly executed by the commanding officer of the American Legion post located within the same county as the applicant and by the Clerk of the Superior Court of said county. If the student about which you inquire should marry a person who would be financially able to provide the funds with which to finance her education, it might affect her status with relation to the question of financial need.

MEDICINE; TRAINED NURSES; BOARD OF EXAMINERS; EXPENDITURE OF FUNDS

27 May, 1944.

You inquire as to whether in my opinion your Board would be authorized to employ some person to assist the educational director of nursing in extending nurse education in the State.

G. S. 90-161, which is Section 5 of your Act, provides that all moneys received in excess of certain expenses and allowances provided for in the Act shall be held by the Secretary and Treasurer for the expenses of the Board and for extending nurse education in the State.

It is my opinion that if an additional employee is necessary in the program of extending nurse education in the State and there are sufficient funds with which to pay such employee after the payment of the items specifically mentioned in the Act, your Board would be justified in employing some person who would be qualified to perform duties toward the extension of nurse education in the State.

MUNICIPALITIES; ESTABLISHMENT OF PLANNING BOARDS

14 June, 1944.

I have received your letter of June 13, 1944, requesting information relative to establishment of Planning Boards by municipalities.

G. S. 160-22 to 160-24 authorizes cities and towns to create Planning Boards for the purpose of making studies of the resources, possibilities, and needs of cities and towns, and provides for the appropriation of money to carry out the purposes of the creation of such Boards.

I find no general statutory authority for the establishment of county Planning Boards or joint county-city Planning Boards. In the absence of a statutory authorization, I am of the opinion that funds could not be legally appropriated for such purposes.

In 1943, the Legislature passed an Act providing for the establishment of a Committee on Post-War Planning for Economic Stability for the County of New Hanover and the City of Wilmington (Public Laws 1943, Chapter 544). Any counties desiring to establish similar Boards could have their legislators ask the next General Assembly for laws authorizing such Planning Boards.

OFFICE DIGEST OF OPINIONS

COUNTIES AND COUNTY COMMISSIONERS: ESTABLISHING NEW PUBLIC ROADS

16 June, 1942.

County commissioners have no authority to lay out and establish new public roads.

COURTS: JURY TRIALS; CRIMINAL PROCEDURE

6 June, 1942.

If a person accused of crime insists upon it, he is entitled to a jury trial in both recorders' courts and courts of justices of the peace, as well as in the superior court. If he is convicted in the court of a justice of the peace and then appeals successively to the recorders' court and the superior court, he may have a jury trial in all three courts.

CRIMINAL LAW: APPEAL; WAIVER OF RIGHT

15 June, 1942.

A person convicted of crime may waive his right to appeal by withdrawing his notice of appeal and commencing the service of his sentence.

ELECTION LAWS: CONVENTIONS; FILING FEES

1 June, 1942.

In counties where nomination of candidates for office by convention is authorized, no filing fee is required of a candidate.

MARRIAGE LAWS: MARRIAGE LICENSE; FEES

16 June, 1942.

The cost of a marriage license in North Carolina is \$5.00, \$3.00 of which goes to the State, \$1.00 to the county, and \$1.00 of which constitutes the fee of the Register of Deeds.

MARRIAGE LAWS: PLACE OF CEREMONY

10 June, 1942.

A marriage license issued in one county does not authorize a minister to marry the couple for whom it is issued in any other county. If the ceremony is performed in a county other than that in which the license is issued, the marriage is not void, but the minister may be liable for penalties under C. S., sec. 2499, for performing a marriage ceremony without a proper license.

MUNICIPAL CORPORATIONS: APPROPRIATIONS; TAXES; PLAYGROUNDS

13 June, 1942.

A municipal corporation is authorized to make appropriations for a system of supervised recreation and playgrounds. Before a special tax can be levied for this purpose, however, an election must be held on this question.

MUNICIPAL CORPORATIONS: BARBER SHOPS; OPENING AND CLOSING HOURS
9 June, 1942.

Municipal corporations are authorized by Public Laws of 1939, Ch. 164, to regulate the opening and closing hours of barber shops.

MUNICIPAL CORPORATIONS: TAXATION; PRIVILEGE TAX BASED ON
GROSS SALES

11 June, 1942.

Pursuant to C. S., Sec. 2677, authorizing municipalities to tax trades and professions, a city may impose a privilege tax upon mercantile establishments graduated according to the gross sales of such establishments.

TAXATION: AD VALOREM; PREPAYMENT

5 June, 1942.

A taxpayer is entitled to pay his taxes between July 1 and October 1 of the year in which they fall due and receive a discount for prepayment. It is mandatory that such prepayments be received by the proper county authorities.

TAXATION: AD VALOREM; VACANT LOT OWNED BY CHURCH

8 June, 1942.

A vacant lot owned by a church which is not used for religious worship or for the residence of the minister is subject to ad valorem taxation.

TAXATION: INCOME TAX; FOREIGN CORPORATION DOING PURELY
INTERSTATE BUSINESS

8 June, 1942.

If a foreign corporation is doing some business in this State, it is not exempt from State income taxation merely because its activities are purely interstate in character.

COURTS: MAYOR'S COURT; TERRITORIAL JURISDICTION

25 June, 1942.

A mayor's court has no jurisdiction over violations of the criminal law of the State occurring outside the corporate limits of a municipal corporation unless its jurisdiction is extended by a special act of the General Assembly.

ELECTION LAWS: INDEPENDENT CANDIDATES

24 June, 1942.

A person who desires to run for office as an independent candidate must comply with the requirements of the election laws by filing a petition with the appropriate number of signers with the State Board of Elections at or before the time prescribed by law for the nomination of candidates by the political parties within the political subdivision in which he wishes to be a candidate. It is too late after the primary date has passed for a person to file his petition and become an independent candidate.

JUSTICES OF THE PEACE: JURISDICTION; VIOLATION OF MUNICIPAL
ORDINANCE

17 June, 1942.

A justice of the peace has jurisdiction over a prosecution under C. S., Sec. 4174, for violation of a municipal ordinance.

JUVENILE COURTS: JURISDICTION; DETERMINING CUSTODY OF CHILDREN
UNDER SIXTEEN YEARS OF AGE

20 June, 1942.

The juvenile court has exclusive original jurisdiction over all controversies as to the custody of children under sixteen years of age, except where a controversy exists between the parents of a child who are living apart but not divorced, in which case the matter is determined on writ of habeas corpus in the superior court, and where there is a controversy between divorced parents, in which event the right to custody of the child is determined in the divorce action.

MARRIAGE LAWS: MARRIAGE CEREMONY; ORDAINED MINISTERS

20 June, 1942.

A marriage ceremony may be performed anywhere in this State by an ordained minister of a religious denomination if he is authorized by his church to perform such ceremonies.

MUNICIPAL CORPORATIONS: BOARD OF COMMISSIONERS; VOTING BY
PROXY

22 June, 1942.

A member of the board of commissioners of a town must be present at a meeting of the board in order to vote. He cannot vote by proxy.

MUNICIPAL CORPORATIONS: ORDINANCES; DOGS RUNNING AT LARGE

22 June, 1942.

A municipal ordinance making it unlawful for owners of dogs to permit them to run at large and providing that a dog shall be killed after the first offense, if he is not confined by the owner, is valid.

MUNICIPAL CORPORATIONS: POOL ROOMS; SALE OF BEER

19 June, 1942.

A municipal governing board has no authority to refuse to issue any licenses for the sale of beer at pool rooms if the applicants have complied with Sec. 511 of Ch. 158 of the Public Laws of 1939. If pool rooms are considered a nuisance, however, the board may by ordinance prohibit altogether the operation of pool rooms within the corporate limits.

NEGOTIABLE INSTRUMENTS: CHECKS; INDORSEMENT IN BLANK;
STOLEN INSTRUMENT

26 June, 1942.

When a check has been indorsed in blank by the payee by writing her name on the back without qualifications or restriction, it may

be negotiated by delivery. If a person steals or wrongfully comes into possession of a check so indorsed, cashes it at a store, and the check is thereafter paid upon presentment to the drawee, neither the store nor the drawee is liable to the payee of the check. The payee's only recourse is against the person who wrongfully cashed the check.

TAXATION: INCOME TAX; FOREIGN CORPORATIONS; NONRESIDENTS

24 June, 1942.

A foreign corporation is not liable for the State income tax unless it has done business in North Carolina.

A nonresident individual is liable for a State income tax on income realized from business, trades, professions, or occupations carried on in this State.

TAXATION: POLL TAX; COUNTIES

25 June, 1942.

Under Article V, Section 1, of the North Carolina Constitution, counties are not authorized to levy poll taxes in excess of \$2.00 for each taxable poll.

**TAXATION: PRIVILEGE TAXES; SALES THROUGH COMMISSARY TO
SELLER'S EMPLOYEES ONLY**

20 June, 1942.

A person who operates a commissary in his back yard through which he sells cigarettes, tobacco products, bottled drinks, etc., to his laborers or employees is liable for privilege taxes for the privilege of engaging in such business. He is not exempted from taxation simply because the sales are to employees and not to the public generally.

**STATE HOSPITALS FOR THE INSANE: PATIENTS; PAYMENT OF COSTS WHERE
INDIGENT PATIENT BECOMES NON-INDIGENT**

31 July, 1942.

When an indigent patient in a State Hospital acquires property, a guardian should be appointed for the patient, and he should pay the costs of maintenance of the patient while in the State Hospital both before and after the patient's becoming non-indigent.

PUBLICATION: COST OF ADVERTISEMENT IN NEWSPAPER; TAX NOTICES

31 July, 1942.

No newspaper shall accept or print any legal advertisement until said newspaper shall have first filed with the clerk of the Superior Court of the county where the legal advertisement is published, a sworn statement of its current commercial rate for the several classes of advertising regularly carried by said publication.

The publication of all advertising required by law to be made in newspapers in this State shall be paid for at not to exceed the legal commercial rate of the newspaper selected.

HEALTH: PRACTICE OF THERAPEUTICS; MASSAGE AND PHYSIOTHERAPY

29 July, 1942.

While there is no State licensing board for persons who wish to engage in the practice of therapeutics, physiotherapists must pay a tax to practice their profession.

DOGS: RABIES LAW; VACCINATION; NOTICE TO OWNERS

28 July, 1942.

Where the rabies law has been followed and the owner of a dog has failed to have his dog vaccinated, it is the duty of the sheriff to notify the owner of said dog to have him vaccinated by a rabies inspector and to produce the certificate of vaccination within three days.

COURTS: JURISDICTION; FEDERAL AND MILITARY COURTS;
GOVERNMENT PROPERTY

27 July, 1942.

Federal and Military courts have exclusive jurisdiction over offenses committed on air port property leased by Federal Government for military purposes.

DOUBLE OFFICE HOLDING: POLICEMAN AND DEPUTY SHERIFF

27 July, 1942.

One individual cannot hold the office of deputy sheriff and the office of city policeman at the same time.

MARRIAGE: MINOR FEMALE

27 July, 1942.

The marriage of a female between the ages of 14 and 16 without the written consent of her parent and without the special license required by C. S. 2494, is not void but voidable.

DOUBLE OFFICE HOLDING: MEMBER COUNTY BOARD OF EDUCATION AND
COUNTY FIRE WARDEN

24 July, 1942.

One individual cannot hold the office of county fire warden and be a member of the county board of education at the same time.

TAXATION: MUNICIPALITIES; REMEDIES AGAINST PERSONAL PROPERTY

22 July, 1942.

A tax collector may attach wages or other compensation, rents, bank deposits, the proceeds of property subject to levy and sale, or other property incapable of manual delivery. Not more than 10 per cent of wages or other compensation shall be liable to attachment and garnishment for failure to pay taxes.

MUNICIPALITIES: MEETINGS OF GOVERNING BODY; QUORUM

22 July, 1942.

At a meeting of the governing body of a town, a majority shall constitute a quorum, and a majority vote of all members present shall be necessary to adopt any motion, resolution or ordinance.

COSTS: ARREST FEES; STATE HIGHWAY PATROLMEN

22 July, 1942.

The fees taxed in the bill of costs for the various courts of the State on account of the official acts of the members of the State Highway Patrol are to be remitted to the general fund in the county in which said cost is taxed.

INSANE PERSONS AND INCOMPETENTS: ALIENS; COMMITMENT TO
STATE HOSPITAL

21 July, 1942

Aliens are not eligible for admission to hospitals for the insane maintained by the State.

DOUBLE OFFICE HOLDING: TOWN MANAGER AND MEMBER COUNTY
BOARD OF EDUCATION

21 July, 1942.

One individual cannot hold the office of town manager and be a member of the county board of education at the same time.

MUNICIPAL CORPORATIONS: ORDINANCES; TAXATION OF TAXICAB
OPERATORS

13 July, 1942.

A municipal corporation has no authority to levy a license or privilege tax upon taxicabs operating in the municipality in excess of \$1.00 per year.

SCHOOLS: TEACHERS; NOTICE OF REJECTION; NOTICE OF ACCEPTANCE

1 July, 1942.

A school teacher's contract continues from year to year, until the teacher is notified by registered letter of her rejection prior to the close of the school term, subject to the allotment of teachers made by the State School Commission.

MERIT SYSTEM LAW: MUNICIPAL HEALTH DEPARTMENT NOT SUPPORTED
BY STATE OR FEDERAL FUNDS

29 June, 1942.

The State Merit System law has no application to a municipal health department which is not supported in whole or in part by state or federal funds.

TAXATION: AD VALOREM; TAX-LEVYING AUTHORITY WHERE SUPPLEMENT
VOTED BY CITY ADMINISTRATIVE UNIT WITH BOUNDARIES
EXTENDING BEYOND THOSE OF MUNICIPAL CORPORATION

30 June, 1942.

When a city administrative unit has voted in favor of a supplementary tax for school purposes, the county commissioners should levy the tax if the boundaries of the unit are not coterminous with and extend beyond the corporate limits of the city.

DIVORCE: RESUMPTION OF MAIDEN NAME OR OTHER NAME BY WOMAN

3 July, 1942.

By complying with the provisions of N. C. Code Ann. (Michie, 1939), Sec. 1663(1), a married woman who has been granted an absolute divorce may resume the use of her maiden name, the name of a prior deceased husband, or a name composed of her given name and the surname of a prior deceased husband.

FINES AND FORFEITURES: DISPOSITION; SCHOOL FUND

3 July, 1942.

Proceeds from forfeited bonds which have been executed by persons found to be infected with communicable diseases under N. C. Code Ann. (Michie, 1939), Sec. 7194(a), should be paid to the county treasurer and credited to the school fund.

PARTNERSHIP: FIRM NAME; DISCLOSURE OF NAMES OF PARTNERS

6 July, 1942.

There is no requirement that the name of a limited partner be displayed in connection with a partnership business. He may lose the benefit of his status as a limited partner if his name appears.

There is no legal requirement that the business of a general partnership be conducted under any particular name. However, C. S., Sec. 3288, makes it unlawful for any person to conduct a business under an assumed name or any designation other than his real name without filing a certificate with the clerk of court showing his real name and the name under which he proposes to do business. This statute is complied with if a general partnership's business name indicates the connection of the partners with the business, although their names are not exactly stated.

STATE LANDS: ACQUISITION BY INDIVIDUAL

6 July, 1942.

The only method by which an individual may obtain title to vacant and unappropriated lands which are not held by the State Board of Education and which constitute a part of the public domain is by entry and grant pursuant to Chapter 128 of the Consolidated Statutes. The Governor and Council of State are not authorized to execute a deed conveying such lands to an individual.

ELECTION: SPECIAL ELECTIONS; ABSENTEE BALLOTS

7 July, 1942.

No absentee ballots may be used in a special municipal election on the question of levying a tax or incurring an indebtedness. It is immaterial whether voters are absent in military service or for other reasons. Absentee ballots may be used in general elections.

TAXATION: AD VALOREM, EFFECT OF REMOVAL FROM CITY

7 July, 1942.

The fact that a person moves from a town or city in which he or she lists taxes for a particular year has no effect on the liability of such person for taxes levied for that particular year.

FINES AND FORFEITURES: JUSTICES OF THE PEACE; DEDUCTING COSTS FROM FORFEITED BOND

10 July, 1942.

A justice of the peace is not authorized to deduct his costs from the proceeds of the forfeited bond of a defendant who has failed to appear in his court.

AGRICULTURE: REGISTRATION OF MANUFACTURERS OF FEED; SUBSIDIARY CORPORATION

14 July, 1942.

Under C. S., Sec. 4727, manufacturers of feed must be registered with the Commissioner of Agriculture. A subsidiary corporation must be registered if it manufactures feed, although the parent corporation is registered.

MUNICIPAL CORPORATIONS: MUNICIPAL AUDITORIUM; LEASE OF RIGHT TO SHOW MOTION PICTURES

14 July, 1942.

A municipal corporation may validly lease to a private citizen the right to exhibit motion pictures in the municipal auditorium.

MILITARY LAW: OFFENSES COMMITTED BY PERSONS IN MILITARY SERVICE; JURISDICTION OF STATE COURTS

22 July, 1942.

State courts have jurisdiction, even in time of war, over the subject matter of offenses committed by persons in military service. However, military authorities have the paramount right to custody of such persons. When a person in the armed forces is held for trial by a State court and the proper military authorities request that he be surrendered to them, the court should order that he be delivered to the military authorities upon finding the facts which give them paramount right of custody.

ADOPTION: FAILURE OF PETITIONERS TO COÖPERATE IN COMPLETION OF
PROCEEDING

29 July, 1942.

A clerk of court, after giving due notice and an opportunity to be heard to the petitioner in an adoption proceeding, would be justified in dismissing the proceeding where they have failed to coöperate in completing such proceeding after it has been instituted.

TAXATION: AD VALOREM; PURCHASE BY COUNTY OF PROPERTY
SUBJECT TO LIEN OF MUNICIPAL TAXES

20 July, 1942.

When a county purchases at private sale property against which a municipality has acquired a lien for taxes, it takes the property subject to the lien.

TAXATION: AD VALOREM; SPECIAL TAX FOR PUBLIC HEALTH

18 July, 1942.

Counties may levy no ad valorem taxes in addition to the fifteen cent tax for general county purposes except taxes which are levied for a special purpose and with the special approval of the General Assembly. A tax to support the county health program is for a special purpose and the special approval of the General Assembly has been given by C. S., Sec. 7075.

TAXATION: COAL YARDS; CHAIN STORE TAX

13 July, 1942.

Where a coal dealer maintains two coal yards, receiving all orders through one of them but delivering coal from either or both, he is liable for the chain store tax.

TAXATION: PAYMENT OF TAXES; CHECKS; PERSONAL OR
UNCERTIFIED CHECKS

13 July, 1942.

The Department of Motor Vehicles is authorized to refuse to accept payment of license and registration fees by personal or uncertified check and to require that payment of such fees be made by cash or its equivalent.

INTOXICATING LIQUORS: BEER AND WINE; MUNICIPAL CORPORATIONS;
POWER OF MUNICIPAL CORPORATIONS TO REFUSE TO ISSUE LICENSE

1 August, 1942.

In the absence of local legislation to the contrary and where the applicant has otherwise complied with the Beverage Control Act, it is mandatory that a municipal corporation issue a beer license to an applicant.

MUNICIPAL CORPORATIONS: ZONING ORDINANCES; STORAGE OF
GASOLINE IN TANKS

3 August, 1942.

The storage of gasoline in tanks can be regulated by zoning ordinances adopted by a municipal corporation. The ordinance must, of course, be uniform.

DOUBLE OFFICE HOLDING: MANAGER OF COUNTY A.B.C. STORE AND
MEMBER OF COUNTY BOARD OF ELECTIONS

4 August, 1942.

While it is not wise for him to do so, a manager of a County A.B.C. Store is not prohibited by Article XIV, Section 7 of the Constitution nor by the election laws from being the Chairman of the County Board of Elections.

PROBATE AND REGISTRATION: ACKNOWLEDGMENT OF INSTRUMENTS
BEFORE ARMY OFFICERS

4 August, 1942.

Instruments required or allowed to be registered should not be admitted to registration when acknowledged before Army officers as Army officers are not authorized by our law to take acknowledgments.

INTOXICATING LIQUORS: BEER AND WINE; SALE WITHOUT LICENSE

5 August, 1942.

Any person who sells beer at retail without having secured a license therefor, violates the criminal laws of the State and can be indicted therefor.

CRIMINAL PROCEDURE: EXTRADITION; COSTS; MISDEMEANOR CASES

5 August, 1942.

Where the crime charged is a misdemeanor, the costs and expenses of extradition are to be paid by the county wherein the crime is alleged to have been committed.

CRIMINAL LAW: BAD CHECKS; STOPPING PAYMENT ON CHECK

5 August, 1942.

A person who gives a check at a time when he has sufficient funds on deposit in the bank on which the check is drawn and later stops payment on the check, is not guilty of violating the bad check law.

MUNICIPALITIES: OFFICIALS; LEAVE OF ABSENCE FOR MILITARY SERVICE

4 August, 1942.

The governing body of a municipality may grant a leave of absence to any municipal official who is going into military service. The governing body may, however, appoint a person to act in the official's stead during the period of the leave of absence granted.

EMINENT DOMAIN: CONDEMNATION PROCEEDINGS; LAND FOR
MUNICIPAL AIRPORT; DWELLINGS

5 August, 1942.

A city cannot condemn the dwelling house, yard, kitchen, garden or burial ground of a property owner without his permission and consent, for the purpose of building a municipal airport.

PUBLIC HEALTH: INSPECTION OF MEAT AND MEAT PRODUCTS

6 August, 1942.

Cities are authorized by statute to establish and maintain establishments within their corporate limits for the inspection of meat and meat products. Outside of the cities, the counties have the right to maintain and create such establishments within the county.

PUBLIC LIBRARIES: MUNICIPALITIES; SUPPORT OF; SURPLUS FUNDS;
PERSONAL LIABILITY OF BOARD OF ALDERMEN

7 August, 1942.

The Board of Aldermen of a city are justified in expending surplus funds of the city in the support of a public library, and if expended in good faith, no personal liability attaches to the aldermen because of such expenditures.

INSANE PERSONS AND INCOMPETENTS: JURY TRIAL IN DETERMINING
COMPETENCY TO MANAGE OWN AFFAIRS

7 August, 1942.

An individual is entitled to a jury trial on the question of whether he is competent to manage his own affairs.

When a mentally deranged is charged with a crime, the question as to the competency of such person to plead shall be determined, and if the court finds that the person is incompetent to plead, he shall be committed to the State Hospital for the Insane.

TAXATION: AD VALOREM TAXATION; DISCOUNTS

7 August, 1942.

A taxpayer who pays his city or county taxes during the month of September of the year for which they are assessed, is entitled to a discount of one-half of one per cent thereon.

TAXATION: LEVY OF TAX FOR SPECIAL PURPOSE; APPROPRIATION TO
CIVILIAN DEFENSE COUNCIL

10 August, 1942.

The County Commissioners are without any statutory authority to levy a special tax for the purpose of supporting civilian defense activities.

ADVERTISEMENT: PUBLICATION OF LEGAL NOTICES

24 August, 1942.

Where legal notices are required to be published in a newspaper published in a county, it would be proper to publish such notices in a paper of general circulation to paid subscribers which is admitted to the U. S. mail in that county, even though the paper is actually printed in another county.

COUNTIES: EMPLOYMENT OF ATTORNEY; LENGTH OF EMPLOYMENT

22 August, 1942.

The Board of County Commissioners do not have authority to employ an attorney for a period extending beyond the term of office of the Board; however, if the attorney is employed to perform specific duties in connection with specific items of business, the contract of employment would be binding on the commissioners even if the duties were not completed until after the term of office of the incumbent Board had expired.

COUNTY COMMISSIONERS: EFFECT OF RESOLUTION RECOMMENDING
BUILDING OF ROADS

28 August, 1942.

A county is not rendered liable in damages for the taking of property by the State Highway and Public Works Commission for the building of a road simply because it has adopted a resolution recommending the building of the road.

COURTS: CLERKS OF SUPERIOR COURT AS COURT OF RECORD

29 August, 1942.

Under the provisions of the Selective Service Act and the Rationing Board Acts, the Clerk of the Superior Court is not considered as a judge of a court of record.

DOUBLE OFFICE HOLDING: NOTARY PUBLIC AND CLERK TO
RATIONING BOARD

14 August, 1942.

There is no constitutional obstacle to the appointment of clerks and other clerical employees of a rationing board to the position of Notary Public.

DESCENT AND DISTRIBUTION: ILLEGITIMATE CHILDREN; RIGHT TO
INHERIT FROM FATHER

14 August, 1942.

In North Carolina, an illegitimate child cannot inherit from his father unless the child has been adopted or legitimated under our statutes.

EXECUTORS: GUARDIANS; REMOVING FROM STATE; ENLISTED AND
DRAFTED MEN

13 August, 1942.

When an executor or guardian enlists or is drafted into the United States Army, he removes from the State within the meaning of C. S., Sec. 175, which requires executors or guardians removing from the State to file with the clerk of court within thirty days an appointment of a process agent. If no process agent is appointed by such executor or guardian, he may be removed.

INTOXICATING BEVERAGES: PURCHASES BY OR FOR MINORS

24 August, 1942.

It is unlawful to sell alcoholic beverages knowingly to any minor. It is also unlawful to buy alcoholic beverages for any minor. If such a sale is made, the minor can be held under bond as a material witness.

MONOPOLIES AND RESTRAINT OF TRADE: PRICE FIXING AGREEMENT BY
COTTON GINNERS

20 August, 1942.

An agreement by the cotton ginner of a county to fix a definite price for ginning cotton and for all to stick to it would probably constitute a combination in restraint of trade which is illegal under our laws relating to monopolies and trusts.

MUNICIPALITIES: DISPOSITION OF FORFEITED BOND IN CASE OF
VIOLATION OF CITY ORDINANCE

29 August, 1942.

The proceeds of a forfeited appearance bond, given for the defendant's appearance in court for a violation of a city ordinance, should be paid to the county school fund, and court costs, fees and a minimum penalty for the violation of the ordinance are not to be deducted before it is so paid.

MUNICIPALITIES: FIRE PROTECTION OUTSIDE CITY LIMITS

27 August, 1942.

Under C. S., Sec. 2804, as amended by Public Laws of 1941, Ch. 188, a municipal corporation may agree to furnish and furnish fire protection to areas outside the corporate limits but within a twelve mile radius of such limits. In furnishing such service the city will enjoy the same governmental immunity as if it were operating within the city limits. Firemen engaged in such service will be entitled to the same pension benefits and to the benefits of the Workmen's Compensation Act to the same extent as if they acted within the city.

MUNICIPALITIES: SALE OF MUNICIPAL PROPERTY; RESALE

28 August, 1942.

When a municipal corporation advertises property for sale to the highest bidder pursuant to C. S., Sec. 2688, it may reserve the right to reject any and all bids.

If the highest bid at such sale is rejected, the property can be sold only by advertising and selling at public sale again under C. S., Sec. 2688.

MUNICIPALITIES: SUNDAY OPERATION OF THEATRES; POWER OF ALDERMEN TO PROHIBIT

14 August, 1942.

A municipality has the power to prohibit the operation of motion pictures on Sunday under its general police power.

OFFICERS: CHIEF OF POLICE; RESIDENCE REQUIREMENTS

22 August, 1942.

Unless the city charter provides otherwise, the Chief of Police of a city has to be a qualified voter and resident of the city.

PUBLIC OFFICERS: NOTARY PUBLIC; AGE LIMIT

11 August, 1942.

A person under the age of twenty-one years is not qualified to hold the office of Notary Public as a person under that age would not be a qualified voter.

PUBLIC OFFICERS: FELONS; NOTARY PUBLIC

14 August, 1942.

A person who has been convicted of a felony, either in North Carolina or another state, and who has not had his citizenship restored, cannot hold the office of Notary Public in North Carolina.

SALARIES AND FEES: CONSTABLES; DEPUTY SHERIFFS; WITNESS FEES

13 August, 1942.

A constable or deputy sheriff who works on a fee basis may receive witness fees in criminal cases in which he arrests the defendant and gives testimony at the trial.

TAXATION: AD VALOREM; FORECLOSURE UNDER C. S., SEC. 7990; LIMITATION OF ACTIONS

19 August, 1942.

There is no statute of limitations against actions to foreclose liens for ad valorem taxes under C. S., Sec. 7990.

TAXATION: INCOME TAXES; DEDUCTIONS

28 August, 1942.

In paying income taxes, the taxpayer is not entitled to deduct from the amount taxable by the State, the amount of income taxes paid by the taxpayer to the Federal Government.

TAXICABS: AGREEMENT TO FURNISH SERVICE AT MONTHLY RATE

21 August, 1942.

There is no statute which makes it unlawful for taxicabs to furnish service to an individual at a flat monthly rate.

ELECTION LAWS: NOMINEE ENLISTING IN ARMY

2 September, 1942.

There is no reason why a person may not remain a nominee for an elective office after enlisting in the Army. However, if he is elected, a question may arise as to whether he can qualify for the office because of his absence from the State.

ELECTION LAWS: BECOMING A CANDIDATE WITHIN TEN DAYS OF ELECTION

30 October, 1942.

The Election Laws provide that if a qualified citizen is nominated to fill a vacancy as a candidate in an election after the time fixed for the printing of official ballots, his name shall not be printed upon said ballots. However, the candidate so nominated may at his own expense have the Board of Elections print a separate ticket upon which the title of the office for which he is a candidate and his own name shall be printed.

ELECTION LAWS: ABSENTEE BALLOT; WHO MAY MAKE APPLICATION

7 October, 1942.

An official absentee ballot can be applied for by the voter in person or by the husband, wife, brother, sister, parent or child of the voter.

ELECTION LAWS: ABSENTEE BALLOTS; OVERSEAS SOLDIERS; COMPLIANCE WITH STATE LAW

30 September, 1942.

An overseas soldier cannot vote an absentee ballot in a general election without complying with the North Carolina Election Law if he wishes to vote for every candidate on the ticket. If he merely desires to vote for United States Senator and Congressman, he can vote by complying with the Soldiers' and Sailors' Absentee Ballot Law.

ELECTION LAWS: REGISTRATION; CLERK OF SUPERIOR COURT SERVING AS REGISTRAR

17 September, 1942.

A Clerk of the Superior Court who is not a candidate in an election cannot legally accept and discharge the duties of registrar in a general

election. Such action is prohibited by C. S. 5928. In addition, if the Clerk should serve as registrar, he would forfeit his position as Clerk of the Superior Court by reason of Article XIV, Section 7 of the North Carolina Constitution.

ELECTION LAWS: WITHDRAWAL OF ABSENTEE BALLOT WHEN VOTER
PRESENT ON ELECTION DAY

24 October, 1942.

When a person leaves an absentee ballot with the Chairman of the County Election Board, anticipating that he will be absent on election day and later finds that he will be present at that time, he may withdraw his ballot and vote in person, provided the absentee ballot has not been deposited with the township registrars.

ELECTION LAWS: ABSENTEE VOTING

9 September, 1942.

The North Carolina Election Laws do not prescribe any time within which a voter must apply to the Chairman of the Board of Elections for an application blank for an absentee ballot. The application for the absentee ballot, however, must be made not more than thirty, nor less than two, days immediately preceding the election.

ELECTION LAWS: QUALIFICATION OF VOTERS; PERSONS LIVING IN THE
DISTRICT OF COLUMBIA

22 October, 1942.

Under C. S., Section 5936, a North Carolina resident who removes to the District of Columbia to engage in the Government Service does not thereby lose his residence in North Carolina during such period of service and he may vote at the place of his residence at the time of his removal to the District. A person living temporarily in the District of Columbia but not in the Government Service may vote in North Carolina if he was a legal resident of North Carolina prior to his removal and if he is in the District of Columbia temporarily and with no intention of making it his permanent home.

ELECTION LAWS: ABSENTEE BALLOTS; DELIVERY TO RELATIVE

8 October, 1942.

When a relative of a voter of the degree of kinship prescribed by statute applies to Chairman of the County Board of Elections for an absentee ballot on behalf of the voter, the relative, if he has signed the application for the ballot in the form prescribed by the statute, is entitled to receive the absentee ballot and mail it to the voter. The Chairman of the County Board of Elections would have no authority to refuse to deliver such ballot if the relative has complied with the statute.

ELECTION LAWS: RIGHT OF A PERSON TO VOTE WHO HAS BEEN
CONVICTED OF FORGERY

4 September, 1942.

The crime of forgery is a felony and as such deprives an individual of his citizenship and the right to vote unless his citizenship has been restored as prescribed by law.

ELECTION LAWS: QUALIFICATION OF VOTERS; REGISTRATION TRANSFER
FROM ONE PRECINCT TO ANOTHER

20 October, 1942.

Under Section 5937 of the North Carolina Code Annotated (Michie's 1939), subject to certain exceptions set out in C. S. 5936, every person who has been naturalized and who shall have resided in the State of North Carolina for one year and in the precinct, ward or other election district in which he offers to vote four months next preceding the election, shall, if otherwise qualified, be a qualified elector in the precinct or ward or township in which he resides. It is further provided that removal from one precinct, ward or other election district to another in the same county, shall not operate to deprive any person of the right to vote in the precinct, ward, or other election district from which he has removed until four months after such removal.

A person who, on August 10, 1942, had been a resident of North Carolina for over one year and of a precinct for the required four months and who on that date moved to another precinct in the same county, would be entitled to register and vote in the general election in the precinct from which he removed, since his removal would not operate as a disqualification to vote until after four months.

CRIMINAL LAW: CARRYING CONCEALED WEAPONS; RIGHT OF DEPUTY
TAX COLLECTOR

25 September, 1942.

A deputy tax collector does not have authority to carry a concealed weapon, except when on his own premises. If he does carry a concealed weapon off of his own premises, he is guilty of a violation of the criminal laws.

REGISTER OF DEEDS: AUTHORITY TO CHANGE NAME ON RECORD OF
MARRIAGE LICENSE

17 September, 1942.

A register of deeds has no authority to change the records of marriage licenses in his office. He cannot change a name appearing on such records.

INTOXICATING LIQUORS: BEER AND WINE; FORBIDDING SALE ON SUNDAYS

17 September, 1942.

A municipal corporation, as an incident to its general power to regulate the closing of mercantile establishments on Sundays, may forbid the sale of beer and wine within the city limits on Sunday.

Unless authorized by a special act of the General Assembly, a municipal corporation has no authority to forbid the sale of beer and wine beyond its corporate limits on Sundays. County commissioners have no authority to forbid the sale of wine and beer throughout the county on Sunday unless specifically authorized to do so by a special statute applicable to the county.

INTOXICATING LIQUORS: COUNTY A. B. C. BOARD; APPROVAL OF NOTES

16 September, 1942.

Notes issued by a county alcoholic beverage control board for money borrowed are not required to be approved by the Local Government Commission.

CONSTABLES JURISDICTION; PERMANENT DEPUTIES

15 September, 1942.

Although constables are elected from townships, their jurisdiction is county-wide.

A constable has no authority to appoint a permanent deputy for the general discharge of the duties of his office.

MOTOR VEHICLES: LOADING; FENDER LINE

15 September, 1942.

The Motor Vehicle Laws of this State provide that no passenger vehicle may be operated on a highway with a load on the left side extending beyond the line of the fenders on that side or with the load on the right side extending more than six inches beyond the line of the fenders on that side.

If a person should ride on the running board and his body should extend beyond these limits, the law would be violated.

OFFICERS: DOUBLE OFFICE HOLDING; NOTARY PUBLIC; MEMBER OF HOME GUARD

22 September, 1942.

The provision of the Constitution of North Carolina prohibiting dual office holding excepts from the operation thereof officers in the militia; therefore, an officer in the Home Guard would not be prevented from holding any other office.

NOTARIES PUBLIC: WOMEN; COMMISSION IN MAIDEN NAME; MARRIAGE

19 September, 1942.

When a woman obtains a commission as Notary Public in her maiden name and later marries, she should, in taking acknowledgments, etc., sign her maiden name and her married name. Such acknowledgments would be valid. However, in applying for a new commission, she should apply in her married name.

GAME LAWS: HUNTING LICENSES; LICENSE TO HUNT ON OWN PREMISES

14 September, 1942.

A resident of North Carolina may hunt upon his own premises without securing a hunting license. If a group of residents own land, they all may hunt thereon without procuring a license.

A nonresident of this State must own one hundred or more acres of land in this State, in his own individual rights, before he can hunt thereon without procuring a license.

UNITED STATES LANDS: MILITARY RESERVATIONS; OFFENSES BY
CIVILIANS THEREON; JURISDICTION OF STATE COURTS

8 September, 1942.

On military reservations acquired by the United States pursuant to our statutes, the courts of the state have no jurisdiction over criminals for offenses committed on such reservations. The offenders should be tried in Federal or military courts.

OFFICE HOLDERS: LEAVES OF ABSENCE

4 September, 1942.

Any appointive or elective county official may be granted a leave of absence to enter the armed services by the County Commissioners. The Commissioners may appoint a substitute or acting official for the period of such leave of absence.

MARRIAGE LAWS: HEALTH CERTIFICATE; PERIOD OF WAITING;
RESIDENCE

1 September, 1942.

There is no prescribed length of time for a person to live in the State before obtaining a marriage license; neither is there any prescribed length of time which must elapse between the time of application for license and the issuance thereof. A blood test taken out of North Carolina is not sufficient for a Register of Deeds to issue a marriage license on unless the test is made by a laboratory approved by the North Carolina State Board of Health.

ACKNOWLEDGMENTS: ATTORNEY WHO IS A NOTARY PUBLIC; DEEDS
DRAWN BY SAID ATTORNEY

1 September, 1942.

While not good policy, there is no provision of law prohibiting an attorney who is a notary public from taking acknowledgments of instruments drawn by him.

STATE LANDS: DEEDS AND CONVEYANCES; WARRANTY OF TITLE

1 September, 1942.

There is some doubt as to the authority of State officials to warrant the title to State lands when said lands are conveyed. Such a warranty may, however, personally bind the officer who executes the deed on behalf of the State.

TAXATION: POLL TAXES; PAYMENT OF BY FELON

1 October, 1942.

A person who has been convicted of a felony and served a sentence in the state's penitentiary is still required to pay a poll tax.

TAXATION: EXEMPTED PROPERTY; VACANT LOTS OWNED BY A CHURCH
30 September, 1942.

Property owned by a church which is not a part of the property on which the church is built is not used by the church in any way for church purposes is not exempt from ad valorem taxation.

TEACHERS AND STATE EMPLOYEES RETIREMENT SYSTEM: APPLICATION
FOR RETIREMENT AND PAYMENT OF BENEFITS
CONSTITUTES RETIREMENT

29 September, 1942.

When the Board of Trustees has acted upon a voluntary application for retirement on account of age and has placed the applicant on the retired list and a state warrant has been issued covering an installment of retirement benefits, the retirement of the applicant from active service is complete and the person so retired cannot thereafter be employed as a teacher or State employee and paid by the State for his services.

DOUBLE OFFICE HOLDING: TOWN COMMISSIONER AND BLACKOUT
ENFORCEMENT OFFICER

29 September, 1942.

While a town commissioner is an officer within the meaning of Article XIV, Section 7, of the North Carolina Constitution prohibiting double office holding, a special policeman, appointed to enforce blackout ordinances, is a commissioner for a special purpose. Therefore, one person can hold both positions.

MOTOR VEHICLES: FOR HIRE LICENSES; FARMER HAULING NEIGHBORS'
PRODUCTS TO MARKET

28 September, 1942.

If a farmer is licensed as a private hauler, he would not be required to purchase a "for hire" license on account of the activity in hauling his neighbors' farm crops or products from the farms and forests to the first or primary market.

PUBLIC HEALTH: VENEREAL DISEASES; COMPELLING PERSONS TO
UNDERGO TREATMENT

28 September, 1942.

Under the law in North Carolina, the County Health Officer may require registrants under the Selective Service Act, when infected with venereal diseases, to report for treatment to a reputable physician and to continue treatment until cured or to submit to treatment provided at public expense until cured.

ELECTIONS: COUNTY BOARDS OF EDUCATION

6 October, 1942.

The members of a County Board of Education are nominated in the primary and elected by the General Assembly. Their names do not appear on the general election ballot.

COMMISSIONER OF PUBLIC TRUSTS: MEMBER BOARD OF COUNTY BOARD
OF COMMISSIONERS SERVING AS BUS DRIVER, TEACHER, JANITOR

10 September, 1942.

It would be a violation of our Statutes for a member of Board of County Commissioners to serve as a school bus driver, a teacher, or janitor, etc. For a Commissioner to accept such employment would amount to a Commissioner of a public trust contracting for his own benefits.

TAXATION: COLLECTION OF TAXES; GARNISHMENT OF RENTS

10 September, 1942.

The rent from property jointly owned by two taxpayers may be garnished by a municipality for taxes due it. Where one taxpayer has paid his proportionate part of the taxes due and has been released, only the share of the rent owing to the delinquent taxpayer can be garnished.

REAL PROPERTY: ACQUIRING TITLE; PAYMENT OF TAXES AS MEANS OF
ACQUIRING TITLE

10 September, 1942.

Payment of taxes due on real property, regardless of how long they are paid, does not give title to the taxpayer.

MEDICINE: HOSPITALS; GIVING X-RAY TREATMENTS; WITHOUT
MEDICAL LICENSE

1 October, 1942.

A graduate of a recognized medical school who is licensed to practice medicine in another state but is not so licensed in North Carolina, must be licensed to practice medicine in North Carolina before he can accept a position as a radium and X-Ray expert in a municipally owned hospital.

DOUBLE OFFICE HOLDING: MAYOR; TAX LIST-TAKER

3 October, 1942.

The positions of Mayor and Tax List-Taker are both offices within the purview of the constitutional prohibition against double office holding. Therefore, one person cannot hold both positions.

COMMISSIONER OF PUBLIC TRUSTS: CONTRACTS FOR HIS OWN BENEFIT

3 October, 1942.

If a town commissioner should sell bonds and insurance to the town for which he is a commissioner, he would violate the statutory provision

regulating commissioners contracting for their own benefit. The Clerk of the Superior Court could, however, sell bonds and insurance to the Board of County Commissioners without violating any statute. He should not sell bonds for guardians and administrators as he would be directly interested therein.

TAXATION: NONRESIDENTS; EXEMPTION FOR SALE OF FARM PRODUCTS BY
PRODUCER

5 October, 1942.

The exemption in the Revenue Act which applies to farmers selling farm products raised on the premises owned or occupied by them, applies equally to nonresidents. This exemption applies where the farmer sells from house to house and also to stores for resale.

SALARIES AND FEES: SHERIFFS; EXECUTIONS; HOMESTEAD EXEMPTION;
PERSONAL PROPERTY

8 October, 1942.

A sheriff is not required to act in matters which require the payment of fees until such fees are paid. Therefore, when an execution is placed in the hands of a sheriff to be satisfied out of real property, the fee of the sheriff for allotting the homestead must be paid before the sheriff is required to act. If to be satisfied out of personal property, the fee does not have to be advanced unless the judgment debtor demands that this personal property exemption be allotted.

COUNTIES: BOARD OF COMMISSIONERS; APPROPRIATIONS FOR
PUBLIC PARKS

9 October, 1942.

The Board of County Commissioners has no authority to make an appropriation for public parks. They do have, however, authority to establish recreation systems and playgrounds.

MOTOR VEHICLES: NONRESIDENTS; LICENSES

9 October, 1942.

If a nonresident soldier's car is properly licensed in his home state, no North Carolina license is required.

TAXATION: INCOME TAXES; MARRIED WOMEN

9 October, 1942.

A married woman having a separate and independent income is entitled to a personal exemption of only \$1,000. If, however, she can qualify as the head of a family, she would be entitled to a personal exemption of \$2,000.

COÖPERATIVE ORGANIZATIONS: CREDIT UNIONS; WITHDRAWING
DEPOSITS BY BANK DRAFTS

10 October, 1942.

Credit unions do not have authority to allow funds on deposit therewith to be withdrawn by bank draft. Such a practice would, in effect, be banking and credit unions are not authorized to engage in commercial banking.

MARRIAGE LAWS: AGE LIMIT; RIGHT TO SECURE LIST OF MARRIAGES

12 October, 1942.

A Register of Deeds is authorized to issue a marriage license to parties nineteen years of age without the consent of parents. A newspaper would have a right to copy the names of married persons from the record.

CRIMINAL PROCEDURE: BAIL; RIGHT TO COMMUNICATE WITH COUNSEL
OR FRIENDS

12 October, 1942.

When a person is arrested, he should immediately be informed of the charge against him and, except in capital cases, should be allowed to give bail. He should be allowed to communicate with counsel and friends immediately. If he is drunk, however, he should not be released until he is in possession of his normal mental faculties.

SCHOOLS: RESIGNATION OF TEACHERS DURING TIME THEY ARE TEACHING

12 October, 1942.

A school board is under no obligation to accept the resignation of a teacher who has not given 30 days notice prior to the commencement of the school year. A teacher could, of course, break her contract of he or she desires to suffer the consequences.

TAXATION: COAL YARDS; MUNICIPALITIES

13 October, 1942.

Cities and towns are authorized by Sec. 112 of the Revenue Act to levy a license tax not in excess of that levied by the State upon persons, firms or corporations engaged in and conducting the business of selling and/or delivering coal or coke at retail.

SCHOOLS: RIGHT TO REQUIRE PUPILS TO SALUTE THE FLAG

14 October, 1942.

Under the decisions of the Supreme Court of the United States and the North Carolina statutes, the principals and teachers in the public schools of North Carolina have the right to require pupils to salute and pledge allegiance to the Flag of the United States.

TAXATION: PROFESSIONAL; "SWEDISH MASSAGE."

14 October, 1942.

There is no state licensing board regulating the practice of massaging. However, Sec. 109 of the Revenue Act levies a license tax upon any person practicing any professional art of healing for a fee or reward for which the person practicing massaging would be liable.

SCHOOLS: AGE AT WHICH CHILDREN ARE ADMITTED

14 October, 1942.

To be entitled to enrollment in the public schools, a child must be six years of age on or before October first of the year in which he enrolls.

TAXATION: STAMP TAX; LINEN AND LAUNDRY SERVICE; OFFICERS' CLUBS ON MILITARY RESERVATIONS

17 November, 1942.

Officers' clubs on military reservation are liable for the stamp tax on linen and laundry delivered to them by laundries operated by civilians.

COUNTY COMMISSIONERS: MINUTES OF MEETINGS; NECESSITY OF PUBLICATION

2 November, 1942.

There is no general statute in North Carolina requiring the County Commissioners to publish in a newspaper its minutes of meetings.

OFFICIAL BONDS: CLERKS OF THE SUPERIOR COURT; REAL PROPERTY MORTGAGE

19 November, 1942.

County Commissioners may accept a real property mortgage as security for the official bond of a Clerk of the Superior Court in lieu of taking a bond with a surety company.

MOTOR VEHICLES: LICENSE PLATES; IMPROPER USE; CUSTODY OF PLATES PENDING APPEAL

20 November, 1942.

The Commissioner of Motor Vehicles has authority pending an appeal to retain custody of automobile license plates of a person who has been convicted of using the plates illegally and has appealed.

DOUBLE OFFICE HOLDING: UNITED STATES COMMISSIONER; RECORDER'S COURT JUDGE

27 November, 1942.

The positions of United States Commissioner and Judge of a Recorder's Court are both offices within the meaning of Article XIV, Section 7 of the North Carolina Constitution; therefore, one person cannot hold both.

MUNICIPAL CORPORATIONS: CITY MANAGER; APPOINTMENT BY
GOVERNING BODY

30 November, 1942.

There is no authority for appointing a city manager for a city which has not adopted the City Manager form of government as set out in the Municipal Corporations Act of 1917.

SHERIFFS: ARREST WITHOUT WARRANTS

14 November, 1942.

A sheriff cannot make an arrest without a warrant for the commission of a misdemeanor, unless the misdemeanor is committed in his presence.

RESIDENCE: CHANGE BY REASON OF JUDGMENT IN CRIMINAL CASE

13 November, 1942.

When judgment in a criminal case is suspended on condition that the defendant remain out of his home county for 12 months, the defendant does not lose his residence in the county from which he is to remain unless he intends to acquire a residence in some other county.

BEER AND WINE: REVOCATION OF LICENSES; POWER OF MUNICIPAL
BOARD TO PUNISH FOR CONTEMPT

13 November, 1942.

Before a beer or wine license is revoked, the licensee should be given such notice as may fairly and properly be expected or required under the particular circumstances.

When the Board of Aldermen are sitting to determine whether a beer or wine license should be revoked, the Board has no authority to punish for contempt.

CONTRACTORS: BIDDING ON CONSTRUCTION CONTRACTS; LICENSES

10 November, 1942.

Under the Contractors Licensing Law, only licensed general contractors are permitted to bid on construction contracts costing \$10,000, or more, and municipal authorities are not authorized to accept a bid from an unlicensed contractor.

ATTORNEY: PRACTICE OF THE LAW; NOTARIES; JUSTICES OF THE PEACE

10 November, 1942.

Justices of the Peace and Notaries Public, as such, are prohibited from drafting deeds and otherwise practicing law by statute in North Carolina.

MARRIAGE LAWS: NONRESIDENTS

2 November, 1942.

Nonresidents who apply for marriage licenses in North Carolina must comply with the North Carolina Law as to blood tests and health certificates.

BEER AND WINE: SALE OF, PROHIBITED BY COUNTY COMMISSIONERS

4 November, 1942.

Unless expressly authorized by statute, a Board of County Commissioners has no authority to prohibit the sale of wine and beer on Sunday or any other time.

INSANE PERSONS: JUDGMENT OF CLERK COMMITTING PATIENT
TO ASYLUM

10 November, 1942.

A proper judgment of the Clerk of the Court committing a patient to an asylum is a final judgment, and the Clerk has no authority to release such patient. Only the Hospital authorities are authorized to release such a patient.

GUARDIAN AND WARD: MINORS WHOSE PARENTS ARE LIVING

4 November, 1942.

The father is the natural guardian of a minor child, and, upon his death, the mother automatically becomes the guardian. Therefore, where the parents are living and are not incapacitated, there is no need for appointing a guardian and the Clerk of Court has no authority to make such appointment where the minor has no property.

PEACE OFFICERS: BONDS; TO WHOM PAYABLE

14 December, 1942.

The bonds required of peace officers appointed by the Governor should be made payable to the State of North Carolina.

The bonds of deputies sheriff should be made payable to the sheriff.

COURTS: JUDGMENT; HIRING OUT PRISONERS

15 December, 1942.

Under certain circumstances, the Board of County Commissioners has authority to hire out prisoners. In such a case, however, the provisions of the statute must be strictly complied with and the authority to hire out such prisoners must be specifically authorized in the judgment of the court.

MARRIAGE: COMMON-LAW MARRIAGES

15 December, 1942.

The State of North Carolina does not recognize common-law marriages, and there is no way in which a common-law marriage can be legally consummated in North Carolina.

CONSTABLES: JURISDICTION

15 December, 1942.

A constable has county-wide jurisdiction and may make an arrest in his county without a warrant to the same extent as any other officer is authorized to make such an arrest.

COUNTY COMMISSIONERS: AUTHORITY TO PAY EXPENSES OF COUNTY
RATIONING AND PRICE BOARDS

3 December, 1942.

A Board of County Commissioners has no authority to pay a salary or per diem to members of the County Rationing or Price Administration Boards, nor to make any allowances to said board for traveling, telephone, or other personal expenses incurred in connection with said Boards, nor to pay for supplies needed by said Boards.

INTOXICATING LIQUORS: FORTIFIED WINES; RIGHT TO TRANSPORT
MORE THAN ONE GALLON

30 December, 1942.

It is unlawful for a person to transport fortified wines in a quantity in excess of one gallon in North Carolina unless the wines are in actual course of delivery to a county store.

DOUBLE OFFICE HOLDING: JUDGE OF RECORDER'S COURT;
UNITED STATES COMMISSIONER

23 December, 1942.

The positions of Judge of a Recorder's Court and United States Commissioner are both offices within the meaning of Article XIV, Section 7 of the North Carolina Constitution prohibiting double office holding; therefore, one person cannot hold both positions at once.

WITNESSES: FEES

19 December, 1942.

When a witness is subpoenaed and appears in Court, separate fees should be charged for the subpoena and the appearance. Thus, the bill of costs would contain a charge for witness fees and a separate charge for subpoena fees.

GENERAL ASSEMBLY: VACANCIES

19 December, 1942.

A vacancy occurring in the General Assembly by reason of death, resignation, or otherwise, shall be filled by holding a special election, the writ of election to be issued by the Governor.

VITAL STATISTICS: CERTIFIED COPIES OF BIRTH AND DEATH
CERTIFICATES; FEES; PERSONS IN MILITARY SERVICE

1 December, 1942.

The State Registrar of Vital Statistics is under no obligation to furnish certified copies of death certificates for members of the armed forces

who have died in service or birth certificates for children of persons in military service without requiring payment of the regular fees provided by Consolidated Statutes, Section 7111.

**TAXATION: TAX ON LANDLORDS RENTING SPACE TO AGENTS FOR DISPLAY OF
MERCHANDISE; CONSTITUTIONALITY**

16 December, 1942.

A municipal ordinance which imposes a privilege tax upon landlords engaged in renting space to agents or to itinerant salesmen for the display of merchandise not regularly carried in stock for retail trade is discriminatory and violative of the equal protection clause of the 14th Amendment to the United States Constitution.

JUSTICES OF THE PEACE: ELECTION; NUMBER FROM EACH TOWNSHIP

1 December, 1942.

Under C. S., Section 1463, provision is made for the election of three justices of the peace from each township at every general election for members of the General Assembly. If only two persons are candidates from a township, one a Republican and one a Democrat, and both receive some votes, both are entitled to be certified as elected.

**CLERKS OF THE SUPERIOR COURT: FEES; JUDGMENT OR ORDER
SIGNED BY JUDGE**

1 December, 1942.

Although Clerks of the Superior Court are ordinarily entitled to receive their fees for the performance of any duty in advance, the Clerk should not require payment in advance for the recording of an order of the court signed by the judge of the superior court, as the minutes of the court would be incomplete without the order's being recorded.

**PATENTS: EXCLUSIVE RIGHT TO MANUFACTURE FERTILIZER;
GENERAL ASSEMBLY**

1 December, 1942.

The General Assembly may not validly enact a law giving the exclusive right to manufacture and sell a fertilizer to the person who has devised a formula for it; for the exclusive power to enact laws granting patent rights is given to Congress under Article I, Section 8, of the Federal Constitution.

**COUNTY COMMISSIONERS: SALE OF PROPERTY ACQUIRED AT TAX
FORECLOSURE SALE**

3 December, 1942.

County Commissioners have full discretion to sell property acquired by the county by purchase at a tax foreclosure sale. The commissioners should seek to obtain the best price possible for the property, whether more or less than the unpaid taxes.

MUNICIPAL CORPORATIONS: SPONSORING PROJECTS WITH LANHAM
ACT FUNDS

31 December, 1942.

Municipal Corporations may sponsor and operate community projects such as nurseries, libraries, etc., which are financed with funds obtained as a grant from the Federal Government under the Lanham Act. If no municipal debt is incurred and no taxes are levied, it is immaterial whether such projects are necessary expenses.

CORPORATIONS: DIVIDENDS; SOURCE

4 December, 1942.

A corporation has no authority to make payment of dividends except out of surplus or net profits. Net profits are that which remains after deducting from the present value of all assets the amount of all liabilities including capital stock.

EXECUTORS AND ADMINISTRATORS: YEAR'S ALLOWANCE; TIME FOR
APPLICATION

5 December, 1942.

A widow's application for payment to her of a year's allowance out of the estate of her husband must be made within one year from the death of the husband.

POLICEMAN: ELIGIBILITY OF PERSON UNDER TWENTY-ONE YEARS OF AGE

7 December, 1942.

A person under twenty-one years of age is not eligible to hold the office of municipal policeman.

ELECTIONS: MUNICIPAL PRIMARIES

4 January, 1943.

Where a city has not adopted one of the statutory plans of government and there is no provision of its charter making provision for a primary, there is no law requiring or authorizing a primary for the selection of candidates for municipal offices.

FINES AND FORFEITURES: DISPOSITION; RIGHTS OF MUNICIPALITIES
TO RETAIN

4 January, 1943.

Fines collected for violations of a city ordinance must be paid into the school fund of the county under Article IX, Sec. 5, of the N. C. Constitution.

MUNICIPAL CORPORATIONS: LIABILITY FOR INJURY OCCURRING TO
AIRCRAFT SPOTTERS

5 January, 1943.

A municipality is not liable for injury done to an aircraft spotter who serves in a tower erected on municipal property with municipal

funds but which is operated under the auspices of the Aircraft Warning Service, and over which the municipality exercises no control.

CRIMINAL PROCEDURE: JUSTICES OF THE PEACE; RIGHT TO COMMIT A
WITNESS TO JAIL IN DEFAULT OF BOND

5 January, 1943.

In a criminal case, a Justice of the Peace is authorized to commit a witness against the prisoner to jail if the witness refuses to give the recognizance required by the Justice of the Peace.

CRIMINAL LAW: PAYMENT OF FINES AND COSTS WITH WORTHLESS CHECKS

6 January, 1943.

Where a defendant in a criminal case is convicted and pays his fine and the costs with a worthless check, his action in giving the worthless check would constitute a violation of the bad check law.

MOTOR VEHICLES: OPERATORS LICENSE; OPERATOR OF ROAD GRADER

7 January, 1943.

No operator's license is required for the operation of a motor grader upon the highways of the State in the course of road maintenance.

PUBLIC POLICY: RIGHT OF COUNTY COMMISSIONER TO VOTE FOR
HIMSELF TO FILL VACANCY IN OFFICE OF SHERIFF

8 January, 1943.

A county commissioner has no right to vote for himself to fill a vacancy in the office of sheriff. Such transaction would be void as against public policy.

TAXATION: AD VALOREM TAXES; COTTON MERCHANT; COTTON
BOUGHT FOR RESALE

11 January, 1943.

Cotton bought by a cotton merchant for resale, which he has on hand on January 1, 1943, should be listed for ad valorem taxation.

TAXATION: DOGS, RURAL DISTRICTS

11 January, 1943.

A person living in a rural district is under the same obligation to list and pay taxes on a dog as a person living in a city or town who owns a dog.

AID TO DEPENDENT CHILDREN: NIECE RECEIVING AID FOR
DEPENDANT INFANT AUNT

14 January, 1943.

A niece is not entitled to receive "aid in dependent children" for her dependent infant aunt.

PRISONS AND PRISONERS: HIRING OUT PRISONERS

15 January, 1943.

When the county commissioners hire out prisoners under authorization by the court, the county commissioners should determine the amount of compensation to be paid for the labor of such prisoners.

COSTS: CRIMINAL LAW; AUTHORITY OF JUDGE TO REMIT

18 January, 1943.

While a judge may suspend sentence upon payment of all or a portion of the costs and the defendant would be relieved of the punishment imposed by paying such costs, he (the defendant) would remain civilly liable for the unpaid portion of the costs.

MUNICIPALITIES: POLICE OFFICERS; ARREST OF MEMBER OF HOME
GUARD FOR FAILURE TO ATTEND DRILLS

20 January, 1943.

A police officer is without authority to arrest a member of the Home Guard without a warrant or other legal process for failure to report for drill.

TAXATION: PERSONS CONVICTED OF FELONY REQUIRED TO MAKE RETURN

25 January, 1943.

A person who has been convicted of a felony, sentenced and served his term is required to make a tax return, including poll tax.

BONDS: RIGHT OF BONDSMAN TO SURRENDER DEFENDANT

27 January, 1943.

A person who signs a bond for a defendant, irrespective of whether for a consideration or not, may arrest the defendant and surrender him to the court from which process is issued or to the arresting officer.

MUNICIPAL CORPORATIONS: OFFICERS; RESIDENCE REQUIREMENTS

28 January, 1943.

A town alderman who moves outside of the corporate limits of the city with the intention of remaining outside permanently would, by such change of residence, vacate his office as town alderman.

POOR: COUNTY HOME; NECESSITY FOR MAINTAINING WHEN
POOR ARE KEPT ELSEWHERE

28 January, 1943.

The board of county commissioners of a county is not required to maintain a county home where the aged and infirm are maintained elsewhere.

PROSECUTION BONDS: COSTS BONDSMEN LIABLE FOR

29 January, 1943.

The surety who has signed the prosecution bond of the plaintiff is liable to the defendant only for those costs which the defendant recovers in the action and which the defendant has advanced.

FORFEITED BAIL: RIGHT TO DEDUCT COURT COSTS

29 January, 1943.

No part of the court costs in a Recorder's Court may be deducted from a forfeited cash bail.

TAXES: POLL TAXES; LEVY BY MUNICIPAL CORPORATIONS

30 January, 1943.

Cities and counties are authorized by the Constitution and the Machinery Act to levy a capitation tax on males of not to exceed one dollar.

ATTORNEY AND CLIENT: SOLDIERS' AND SAILORS' CIVIL RELIEF ACT;
COMPENSATION OF ATTORNEYS

2 February, 1943.

There is no statutory authority which would permit a state court, which appoints an attorney to represent a person in the armed forces under the Soldiers' and Sailors' Civil Relief Act, to award compensation to the attorney. Attorneys so appointed must serve without pay.

CITIZENSHIP: RESTORATION; PERSON PAROLED FROM PRISON

15 February, 1943.

Under C. S., Sec. 386, a person who has forfeited his citizenship as a result of conviction of crime, may not apply for restoration of his citizenship until the expiration of two years from the time he was finally discharged. A person who has been paroled may not apply for restoration of citizenship until two years after he is discharged from the supervision of the parole authorities.

CLERKS OF THE SUPERIOR COURT: ASSISTANT CLERKS; JUVENILE COURT

17 February, 1943.

An assistant clerk of the superior court has authority to act as judge of the juvenile court in the absence of the clerk.

CLERKS OF THE SUPERIOR COURT: COMMISSIONS; TENDER

18 February, 1943.

A clerk of the superior court is not entitled to a commission on funds paid into his office as a tender in a civil action.

HEALTH: VENEREAL DISEASES; TREATMENT OF MINORS; CONSENT OF
PARENT OR GUARDIAN

25 February, 1943.

Physicians of venereal disease clinics of the State Board of Health may require minors infected with venereal diseases to submit to treatment with or without the consent of their parents or guardians.

INTOXICATING LIQUORS: TRANSPORTING TO GOVERNMENT RESERVATIONS

15 February, 1943.

Alcoholic beverages stored in a State supervised warehouse may not be consigned to a government reservation and transported thereto by a common carrier through dry counties. However, alcoholic beverages may be consigned to a government reservation from outside the State and transported thereto by a common carrier.

NOTARIES PUBLIC: OMISSION OF DATE OF EXPIRATION OF COMMISSION

8 February, 1943.

Under C. S., Sec. 3177, notaries public are required to state after their official signatures the date of the expiration of their commissions. However, failure to state the expiration date of their commissions does not invalidate the official acts of notaries public.

NOTARIES PUBLIC: QUALIFICATION

28 February, 1943.

A person who has been commissioned as a notary public must qualify before the clerk of the superior court before undertaking to act officially as a notary public.

PUBLIC OFFICERS: NECESSITY FOR RE-ELECTED OFFICER TO QUALIFY

2 February, 1943.

An officer who has been reelected to an office must qualify for his new term of office as must officers who have been elected for their first terms.

REGISTER OF DEEDS: VITAL STATISTICS; FEE FOR DELAYED REGISTRATION
OF BIRTH CERTIFICATES; DISPOSITION

25 February, 1943.

A register of deeds who is paid a salary in lieu of fees should not retain personally fees for delayed registration of birth certificates but should account to the county for such fees.

SCHOOLS: EDUCATIONAL SERVICES FOR CHILDREN UNDER SIX YEARS OF
AGE WHERE FEDERAL GOVERNMENT FURNISHES ALL OF THE FUNDS

15 February, 1943.

Educational services for children under six years of age may be provided for under the supervision of the public school system where the total cost is borne by the Federal Government.

TAXATION: INCOME TAXES; CAMPAIGN EXPENSES

16 February, 1943.

Campaign expenses, incurred while seeking election to office, are personal and not business expenses and are not, therefore, deductible when computing income for income tax purposes.

TAXATION: INCOME TAX; REPORTING INCOME OF MINOR

5 February, 1943.

Under the law of North Carolina a parent is entitled to the income received by a minor child for personal services if the child has not been emancipated. Therefore, for state income tax purposes such income should be reported as income of the parent in the income tax return filed by the parent. The parent would not be entitled to any additional personal exemption on account of reporting the income of a minor child.

If a minor child has been emancipated, the income of the minor should be reported in an income tax return filed by the minor, the minor being allowed a personal exemption of \$1,000.

If a minor child who has not been emancipated has an income in excess of \$1,000, from sources other than personal services, such income should be reported in a separate return filed in the minor's name. Such income would be subject to a personal exemption of \$1,000.

TAXATION: INTANGIBLES TAX; MEMBERS OF ARMED FORCES

22 February, 1943.

Members of the armed forces who are residents of North Carolina are liable for the state intangibles tax on deposits in North Carolina banks.

VITAL STATISTICS: BIRTH CERTIFICATES; AMENDMENT

23 February, 1943.

The state registrar of vital statistics, upon satisfactory proof, may accept an amendment to a birth certificate to correct errors in the original certificate.

WITNESSES: FEES; HEARING BEFORE COUNTY COMMISSIONERS ON
REVOCATION OF BEER LICENSE

5 February, 1943.

A witness who appears at a hearing before a board of county commissioners to determine whether a beer license shall be revoked is not entitled to be paid witness fees.

ADOPTION: CONSENT OF FATHER WHERE CUSTODY OF CHILD IS
AWARDED TO MOTHER IN DIVORCE

6 March, 1943.

Where husband and wife are divorced and the wife is awarded custody of the child, the consent of the father must still be obtained in a proceeding to adopt the child.

ADOPTION: RELEASE BY MOTHER OF ILLEGITIMATE CHILD

8 March, 1943.

A superintendent of public welfare should not undertake to accept a release or surrender affidavit from the mother of an illegitimate child where the residence of the mother is in a county other than the county in which the superintendent of public welfare was appointed.

CIVIL PROCEDURE: SERVICE OF PROCESS; CONSTABLES

18 March, 1943.

A summons in a civil action or special proceeding in the superior court may be served by a constable as well as by the sheriff if the process is directed to him. However, if the summons is directed to "the sheriff or other proper officer," it should be served by the sheriff or one of his deputies and not by a constable.

CONSTABLES: LEAVE OF ABSENCE

1 March, 1943.

When a town constable has obtained a leave of absence to enter the military service of the United States, he is entitled to the office when he is discharged from such military service if the term of office for which he was appointed or elected has not expired. The leave of absence, of course, does not operate to extend his term of office beyond that for which he was appointed or elected.

CRIMINAL LAW: CARRYING CONCEALED WEAPONS; ISSUING PERMITS THEREFOR

10 March, 1943.

No person or agency is authorized to issue a permit which would entitle a person to carry a concealed weapon who would not otherwise be entitled to do so under the law.

CRIMINAL LAW: MASTER AND SERVANT; ENTICING SERVANTS TO LEAVE; TENANTS AND SHARE CROPPERS

12 March, 1943.

Under C. S., Sec. 4469, it constitutes a misdemeanor for a person to entice or persuade a servant to leave unlawfully the employment of his master when the servant is under obligation by reason of a contract, oral or written, to work for the master. However, a tenant or a cropper is not a servant within the meaning of this section.

DOUBLE OFFICE HOLDING: MEMBER GENERAL ASSEMBLY AND CASE WORKER ON WELFARE STAFF

9 March, 1943.

While a member of the General Assembly is an officer within the meaning of Article XIV, Section 7, of the N. C. Constitution, prohibiting double office holding, a case worker on the welfare staff is not; therefore, one person may hold both positions.

HEALTH: SANITATION; DISCONTINUANCE OF SEWER SERVICE BY
PRIVATE CORPORATION

12 March, 1943.

There is no statute which regulates discontinuance of sewer service to an individual by a private corporation on account of the individual's failure to pay fees.

JUVENILE DELINQUENTS: PLACING JUVENILE ON PROBATION; AGE

3 March, 1943.

Where a juvenile delinquent is placed on probation, the juvenile court retains jurisdiction during the minority of the child unless the judgment of the court provides otherwise.

MOTOR VEHICLE LAWS: SPEEDING; JURISDICTION OF JUSTICES OF THE
PEACE

5 March, 1943.

A justice of the peace does not have jurisdiction to dispose of a case of speeding on a highway of the State.

MUNICIPAL ELECTIONS: PRIMARIES; CANDIDATES; NECESSITY
FOR ELECTION

18 March, 1943.

A municipal election should be held in a municipality at the time provided by law although it is apparent that the incumbents in office will not be opposed. Unless a municipality has adopted one of the special plans of government provided in the 1917 Municipal Corporations Act or unless provision has been made for it in a special act of the legislature relating to the particular municipality, there is no legal requirement that a municipal primary be held; and any person may become a candidate in the general municipal election by giving notice of his candidacy prior to the election day.

MUNICIPALITIES: FRANCHISE FOR PUBLIC UTILITIES; ARBITRARY
REVOCATION

5 March, 1943.

A franchise granted to a public utility containing no provision for revocation, cannot be revoked arbitrarily by the municipality during the time for which it was granted.

OFFICERS: FORFEITURE OF PRIVILEGE BY CONVICTION IN FEDERAL COURT

5 March, 1943.

A person who has been convicted of an offense in a federal court is not disqualified to hold office in North Carolina.

PRISONS AND PRISONERS: EXPENSE OF CONVEYING PRISONER TO
STATE PENITENTIARY

18 March, 1943.

The expense of conveying a prisoner to the State Penitentiary is an obligation of the county in which the prisoner was convicted.

PUBLIC HEALTH: X-RAY OF SCHOOL TEACHERS

4 March, 1943.

The county board of education has authority to require an X-ray or fluoroscopic examination of the chest of each teacher or school employee as a basis for the certificate required, provided the examination is furnished free or at a nominal cost.

SCHOOLS: DEAF CHILDREN; ATTENDANCE IN PUBLIC SCHOOLS

3 March, 1943.

The public school authorities have authority to refuse to accept a deaf and dumb child in the public schools. The child should attend the school for the deaf at Morganton.

SCHOOLS: EXCLUSION OF PUPILS ON ACCOUNT OF MARRIAGE

10 March, 1943.

School authorities do not have the right to dismiss from the public schools pupils who have married during the school term, merely because they have married.

TAXATION: AD VALOREM; VALUATION OF COTTON PLEDGED AS
SECURITY FOR DEBT

3 March, 1943.

Cotton held and owned by a merchant for resale should be assessed for taxation at the value of the cotton, and no deduction should be allowed for money borrowed and for which the cotton is pledged as security. Where, however, the cotton is pledged as collateral for the purchase price thereof, the amount of the purchase price owed and for which the cotton is pledged should be deducted when the cotton is assessed for taxation.

TAXATION: ATTACHMENT AND GARNISHMENT; JURORS' FEES

22 March, 1943.

Fees paid to jurors as compensation for their services as jurors are in the nature of compensation for personal services. Under subsection (d) of Sec. 1713 of the Machinery Act, a local tax collector may garnish up to ten per cent of the amount of such fees, for the statute provides that compensation due a taxpayer but not more than ten per cent of compensation for personal services shall be subject to attachment and garnishment for failure to pay taxes.

TAXATION: INCOME TAXES; CIVIL EMPLOYEES OF FEDERAL GOVERNMENT
RESIDING ON FEDERAL RESERVATIONS

9 March, 1943.

Civilian civil service employees who are residents of North Carolina, living in government buildings on government reservations, are subject to North Carolina income taxes.

TAXATION: INCOME TAX; PERSONS IN ARMED FORCES

17 March, 1943.

By virtue of an Act of the 1943 General Assembly, North Carolina residents who are in the armed forces of the United States do not have to include in their gross income for state income tax purposes, compensation received from the United States for their service in the armed forces. The exemption does not apply to income of such persons from other sources.

TAXATION: INCOME TAXES; UNINCORPORATED COÖPERATIVE ASSOCIATIONS

9 March, 1943.

There is no provision of the Revenue Act exempting unincorporated mutual associations formed for agricultural purposes from income taxation. There is, however, a provision exempting such associations when incorporated from income taxes.

TAXATION: REFUND OF INCOME TAX

9 March, 1943.

Where a lawyer collects a fee from a client and includes the same in his net income for taxation purposes and later refunds a part of said fee to the client, the lawyer is entitled to a refund of income taxes on the portion so remitted to the client. This is a legitimate adjustment which actually reduces the net income for the year when collected.

WAR BONUS: EMPLOYEES WHOSE SERVICE TERMINATED PRIOR TO
ENACTMENT OF LAW

11 March, 1943.

A state employee who was employed by the State on January 1, 1943, is entitled to receive a War Bonus for the period of time which he was in the service of the State after that date, even though he left the service of the State prior to the date of the enactment of the law providing the War Bonus.

A teacher who was employed at any time during the second half of the school year 1942-1943 is entitled to a bonus for such part of said period as she was in service, even though she ceased to teach prior to the enactment of the law providing the War Bonus.

COUNTY COMMISSIONERS: LEAVES OF ABSENCE

30 March, 1943.

A board of county commissioners has authority to grant a leave of absence to one of its members.

CRIMINAL LAW: BASTARDY; PERSON UNDER SIXTEEN YEARS OF AGE

25 March, 1943.

A juvenile court and not the superior court has jurisdiction over a person under sixteen years of age accused of bastardy. The juvenile court would have authority to require a boy under sixteen years of age

who is found to be the father of an illegitimate child and to have willfully failed and refused to support it to make payments for the support of the child.

DOUBLE OFFICE HOLDING: SUPERINTENDENT OF CITY SCHOOL

25 March, 1943.

The Superintendent of a city administrative school unit is an officer within the meaning of the constitutional prohibition against double office holding.

INTOXICATING LIQUORS: A. B. C. BOARDS; DISPOSITION OF FUNDS FOR LAW ENFORCEMENT; INSTALLING RADIOS IN CARS OF SHERIFF AND DEPUTIES

24 March, 1943.

No limitation is placed upon county A. B. C. boards in the expenditure of the ten per cent of total profits required to be spent for law enforcement except one or more officers responsible to the board shall be appointed for law enforcement work. If an A. B. C. board determines that it will aid law enforcement in the county and that it is desirable, part of the ten per cent set aside for law enforcement may be used to install police radios in the cars of the sheriff and his deputies.

INTOXICATING LIQUORS: BEER AND WINE; MUNICIPAL REFERENDUM

25 March, 1943.

There is no general law which authorizes municipalities in this State to hold referenda on the question of outlawing the sale of beer and wine.

INTOXICATING LIQUORS: SALES IN VIOLATION OF CLOSING HOURS FIXED BY H. B. 180; REVOCATION OF LICENSE; EFFECT OF APPEAL

14 April, 1943.

Where a person is convicted of violating the provisions of H. B. 180 relating to the hours for the sale of wine or beer, his license must be revoked by the courts. However, revocation becomes effective only after a final conviction. If a person is convicted in a recorder's court and appeals to the superior court, the revocation is not effective pending such appeal.

MUNICIPAL ELECTIONS: PRIMARIES; ORDINANCES

14 April, 1943.

Where there is no general law or special act which would authorize the holding of a municipal primary, a municipal ordinance providing that candidates for municipal office be nominated in a primary is not valid. A person would not be precluded from filing as a candidate in the general municipal election by reason of his failure to be nominated in a primary held under the color of such an invalid ordinance.

OFFICIAL SEALS: CLERKS OF THE SUPERIOR COURT; PROVIDING NEW SEALS

14 April, 1943.

Under Senate Bill No. 349, which amends C. S., Sec. 7650, it is the duty of the board of county commissioners of a county to provide the clerk of the superior court with a new seal when his official seal is lost or so worn or defaced as to be rendered unfit for use.

PRISONERS: PERSONS ERRONEOUSLY CONVICTED AND SENTENCED;
COMPENSATION

24 March, 1943.

There is no statute in this State which authorizes compensation to be paid by the State to persons who have been convicted of crime and served part of a sentence and are later found to be innocent.

TAXATION: DOG TAX; CRIMINAL LIABILITY

30 March, 1943.

A person who fails to list his dog for taxation is guilty of a misdemeanor. However, if a dog has been properly listed, and the owner fails to pay the tax, he is not guilty of any criminal offense. Senate Bill No. 33, enacted at the recent session of the General Assembly, has repealed the provision of C. S., Sec. 1676, making it a criminal offense to fail to pay dog taxes.

TAXATION: PRIVILEGE TAXES; SALES BY PRIVATE CLUB TO MEMBERS ONLY

23 March, 1943.

A private club organized for charitable, educational, and recreational purposes which operates a drink stand and lunch counter at which sales are made to members only is not exempt from payment of privilege taxes for the operation of the drink stand and lunch counter.

WORKMEN'S COMPENSATION: SHERIFFS

31 March, 1943.

The term "employee" is defined in Sec. 2(b) of the Workmen's Compensation Act to include all officers and employees of municipal corporations and political subdivisions of the State except such as are elected by the people. As sheriffs are elected by the people, they are not covered by the Workmen's Compensation Act.

DRAINAGE DISTRICTS: CREATION; RESPONSIBILITY OF DEPARTMENT OF
CONSERVATION AND DEVELOPMENT

12 April, 1943.

The only responsibility of the Department of Conservation and Development in connection with the creation of a drainage district is the approval of the engineer selected to do the work. The Department has no authority to pass upon the feasibility or desirability of the work.

PUBLIC OFFICERS: COMMISSIONERS OF PUBLIC TRUST CONTRACTING FOR
OWN BENEFIT; MEMBER OF SCHOOL BOARD ACCEPTING
EMPLOYMENT AS TEACHER

14 April, 1943.

Under C. S., Sec. 4388, which makes it a misdemeanor for a commissioner of a public trust to enter into a contract for his own benefit, it would be unlawful for a member of a local school board to accept employment as a teacher.

CRIMINAL PROCEDURE: ARRESTS; SHERIFFS, HOT PURSUIT

13 April, 1943.

A sheriff has no authority to pursue and arrest a person charged with a misdemeanor beyond the territorial limits of his county.

MUNICIPAL ELECTIONS: RESIDENCE; ELIGIBILITY TO VOTE AND HOLD OFFICE

12 April, 1943.

A person who has a place of business in a town and spends three days a week there but who resides with his family in another town is not a legal resident of the town where his place of business is. He is not qualified to vote there nor to hold the office of mayor or alderman.

TAXATION: AD VALOREM; PERSONAL PROPERTY; HOUSEHOLD AND KITCHEN
FURNITURE IN SUMMER COTTAGE, PLACE OF LISTING

12 April, 1943.

A person who owns a summer cottage in one county but who resides in another county for the greater part of the year should list household and kitchen furniture in the summer cottage for taxation in the county in which he resides the greater part of the year.

MOTOR VEHICLES: DRIVERS LICENSES; PERSONS FIFTEEN YEARS OF AGE

10 April, 1943.

Under House Bill 299 (1943 General Assembly), an infant fifteen years of age may be granted license to operate a motor vehicle if the application therefor is signed by the parent or person in *loco parentis*. An application signed by an uncle of the infant with whom the infant had been living for several years, where the address of the infant's parents is unknown, would be signed by the person in *loco parentis*.

WORLD WAR ORPHANS: EDUCATIONAL BENEFITS; ROOM RENT

10 April, 1943.

While certain world war orphans are entitled to educational benefits and to free room rent and board in certain State institutions which provide rooms and eating halls operated by the institution, the institution is not required to make cash payments to the student when he boards or rooms at places other than the institution's dormitories or eating halls.

FINES AND FORFEITURES: CLERKS OF COURT; COMMISSIONS

10 April, 1943.

The Clerk of the Superior Court is not entitled to a commission on fines and forfeitures collected, as the clear proceeds of such are appropriated by Article IX, Section 5, of the Constitution.

DESCENT AND DISTRIBUTION: ILLEGITIMATE CHILDREN; INHERITING FROM MOTHER'S BROTHER

9 April, 1943.

An illegitimate child cannot inherit property from his mother's brother who dies intestate in North Carolina.

DRIVER'S LICENSES: POWER OF GOVERNOR TO REINSTATE LICENSE AFTER REVOCATION

9 April, 1943.

The pardoning power of the Governor is not broad enough to permit him to restore or reinstate a driver's license which has been revoked as a result of a conviction of drunken driving.

MUNICIPAL ELECTIONS: CANDIDATE IN MILITARY SERVICE

9 April, 1943.

A person who is absent from this country in military service and who is otherwise qualified may become a candidate for office in a municipal election. However, if he is elected, he may be unable to qualify as such officer on account of his absence.

MUNICIPAL ELECTIONS: PRIMARIES; GENERAL ELECTION; NECESSITY WHEN ONLY ONE CANDIDATE FILES FOR SUCH OFFICE

9 April, 1943.

Where, under a city charter or special act of the General Assembly, candidates for municipal office are nominated in a primary, it is not ordinarily necessary that a primary be held if the candidates who file in the primary are all unopposed.

It is always necessary to hold the general municipal election, as contrasted with a primary, even though the candidates for election are unopposed.

ELECTIONS: CANDIDATE SERVING AS ELECTION OFFICIAL

29 March, 1943.

It is provided by Statute in North Carolina that no person who is a candidate for office in an election shall serve as Registrar or Judge or assistant in the election.

A. B. C. STORES: NECESSARY EXPENSES; CONTRIBUTION TO CHAMBER OF COMMERCE

7 April, 1943.

County A. B. C. Stores have no right to make contributions to worthwhile community enterprises such as the Community Chest, as they are not necessary expenses to the operation of the Stores.

CLERKS OF SUPERIOR COURT: AUTHORITY TO FIX AMOUNT OF BOND

29 March, 1943.

The Clerk of the Superior Court has no authority to fix the amount of bail bonds for persons who are in jail to await trial. He should allow the persons who propose to sign bonds, the amount of which has already been fixed by the proper official, to make oath that they are worth the amount of the bond.

COUNTIES AND COUNTY COMMISSIONERS: DONATIONS OF FUNDS FOR
COMMUNITY HOUSE FOR BENEFIT OF TOWN

8 April, 1943.

A Board of County Commissioners has no authority to donate county funds to be used in purchasing a municipal community house to be used for the benefit of citizens of a single town, and over which the county will have no control.

DIVORCE LAWS: REMARRIAGE AFTER DIVORCE

9 April, 1943.

As soon as an action for divorce has been tried and a judgment has been signed granting the parties an absolute divorce, the parties may marry again. No waiting period after the decree or judgment is signed is required in North Carolina.

MARRIAGE LAWS: LICENSE ISSUED OUTSIDE STATE

5 April, 1943.

A marriage may not legally be celebrated in this State under the authority of a license issued in another State.

MARRIAGE LAWS: WHITE PERSONS AND INDIANS

2 April, 1943.

Marriage between white persons and indians are forbidden in North Carolina by C. S. Sec. 2495.

PROBATE AND ACKNOWLEDGMENT: WHEN TAKEN BEFORE
MILITARY OFFICERS

29 March, 1943.

H. B. No. 40 (1943 General Assembly) authorizes acknowledgments to be taken by a Captain or officer of higher rank in the army or marine corps, who is stationed outside the continental United States, and before a Lieutenant (Senior Grade) or officer of higher rank in the navy, coast guard or merchant marine, who is serving outside the territorial waters of the continental United States.

SCHOOL LAWS: COUNTY BOARDS OF EDUCATION; LIABILITY FOR
SCHOOL BUS ACCIDENT

9 April, 1943.

A County Board of Education is not liable to a person for injuries suffered as a result of a collision between a school bus and his automobile.

TEACHERS AND STATE EMPLOYEES RETIREMENT SYSTEM: WITHDRAWAL OF
MEMBERSHIP; RETURNING TO STATE EMPLOYMENT

26 March, 1943.

When a school teacher who is a member of the teacher's and State employees retirement system leaves the service of the State and withdraws her accumulated contributions and then again becomes a school teacher, she automatically becomes a member of the retirement system but loses her credit for prior service.

CONSTABLES: JURISDICTION

20 April, 1943.

The powers and duties of constables are co-extensive with the limits of the County in which they are appointed.

COSTS: SOLICITOR'S FEES; DISPOSITION

17 April, 1943.

When the Clerk of the Superior Court taxes the solicitor's fees in a bill of costs against the defendant in a criminal action, such fees, when collected, should be paid into the school fund of the County.

CRIMINAL PROCEDURE: PRELIMINARY EXAMINATION IN COURT NOT
HAVING FINAL JURISDICTION; NOLLE PROSEQUI

28 April, 1943.

The solicitor of an inferior court does not have jurisdiction to take a nolle prosequi in a case of which the inferior court does not have final jurisdiction. The court should hear the evidence, and if probable cause is found, the defendant should be bound over to a court having final jurisdiction.

DIVORCE: RESIDENCE; MEN IN ARMED SERVICES

16 April, 1943.

A soldier who is sent to a military camp in North Carolina for training would not be a resident of North Carolina within the meaning of the divorce laws of North Carolina. Of course, if the soldier lived off of the reservation and intended to make North Carolina his home, he would be a resident.

ELECTIONS: MUNICIPAL ELECTIONS; CANDIDATES FILING FOR OFFICE

15 April, 1943.

Notwithstanding the fact that the filing time for candidates in a municipal election has expired, the voters may write in the name of any person for whom they desire to vote, unless such practice is prohibited by local act.

INTOXICATING LIQUOR: SALES OF CONFISCATED TAX-PAID LIQUOR;
DISPOSITION OF PROCEEDS OF SALE

16 April, 1943.

The proceeds derived from the sale of confiscated tax-paid liquor should be paid into the school fund of the County in which the seizure is made.

LOTTERIES

30 April, 1943.

No lotteries are authorized by the laws of North Carolina and none have been authorized within the past five years.

MOTOR VEHICLES: DRIVER'S LICENSE; OPERATION OF FARM TRACTOR
WITH TRAILER ON HIGHWAY

1 April, 1943.

No operator's license is required to drive a farm tractor with trailer attached on the highway, if it is temporarily operated upon the highway in connection with farming operations.

MOTOR VEHICLE LAWS: SPEED RESTRICTIONS; JURISDICTION OF
JUSTICE OF THE PEACE

22 April, 1943.

A Justice of the Peace does not have jurisdiction of a case of speeding upon the highways.

OFFICERS: RIGHT TO HOLD OFFICE; PERSON NOT REGISTERED

21 April, 1943.

A person must be a registered voter in a town to hold the office of Mayor of the town.

STATE INSTITUTIONS: SUBSISTENCE ALLOWANCES FOR EMPLOYEES

24 April, 1943.

The regulation of subsistence allowances for officers and employees of State institutions is a part of the functions and duties of the Assistant Director of the Budget.

TAXATION: MUNICIPAL CORPORATIONS; BARBER SHOPS; LICENSE TAXES

15 April, 1943.

Section 140 of the Revenue Act does not authorize municipalities to levy a tax of \$5.00 on each barber in addition to the tax of \$2.50 for each chair.

CLERK SUPERIOR COURT: HOURS OF ATTENDANCE AT OFFICE; RIGHT OF
BOARD OF COMMISSIONERS TO AUTHORIZE CLOSING OF
OFFICE ON CERTAIN AFTERNOONS

8 May, 1943.

The Board of County Commissioners of a county has no authority to authorize the Clerk of the Superior Court to close his office on Wednesday afternoons during the summer. They may regulate the hours the Clerk shall attend his office on Saturdays, but such hours shall be not less than three nor more than nine on each Saturday.

CRIMINAL LAW: LIMITATION OF ACTIONS; KIDNAPPING

7 May, 1943.

There is no statute of limitations in North Carolina which would bar a prosecution for kidnapping.

DOUBLE OFFICE HOLDING: JUSTICE OF THE PEACE AND TOWN COMMISSIONER

6 May, 1943.

While a Justice of the Peace is an officer he is expressly exempted from the provisions of Art. XIV, § 7 of the North Carolina Constitution which prohibits double office holding; therefore, a Justice of the Peace may also be a Town Commissioner. Since the exemption does not apply to Notaries Public, a Notary Public may not hold the office of Town Commissioner.

INTOXICATING LIQUOR: CONFISCATED LIQUOR

3 May, 1943.

When tax-paid liquor is confiscated, it should be turned over to the Board of County Commissioners to be disposed of as provided by law. The Mayor of a town has no authority to order the liquor sold and the proceeds thereof placed in some particular fund.

MARRIAGE LAWS: ORDAINED MINISTERS; RESIDENCE

3 May, 1943.

If a minister is an ordained minister of a religious denomination and, as such minister, is authorized to perform the marriage ceremony, the fact that he is a nonresident of North Carolina would not prevent him from performing a marriage ceremony in this State.

MARRIAGE LAWS: RECOGNITION OF MARRIAGE BY PROXY

3 May, 1943.

A marriage cannot be celebrated in North Carolina by proxy, and such marriage would not be recognized in this state if so celebrated.

MUNICIPAL CORPORATIONS: AUTHORITY TO BUILD AND OPERATE A PUBLIC ABATTOIR

4 May, 1943.

A municipal corporation has authority to build and operate a public abattoir as a necessary expense.

MUNICIPAL ELECTIONS: PERSON ELECTED WHO DID NOT FILE AS CANDIDATE

8 May, 1943.

A person elected in a municipal general election may qualify for office even though he did not file as a candidate for such office.

MUNICIPAL ELECTIONS: DETERMINING RESULTS; CANDIDATE
RECEIVING TIE VOTE

7 May, 1943.

In municipal elections where candidates receive the same number of votes, the result of the election shall be determined by lot.

STATUTES: EFFECTIVE DATE; CHANGES IN SALARIES

1 May, 1943.

When a statute provides that it shall be in full force and effect from and after ratification, changes in the salaries of county officials, provided by the act, become effective immediately upon ratification rather than at the commencement of the next fiscal year.

TAXATION: GALLONAGE TAX ON ICE CREAM SOLD TO MILITARY CAMPS

3 May, 1943.

The gallonage tax levied on ice cream by the Revenue Act is levied primarily upon the manufacture of ice cream, and the fact that the ice cream is later sold to the government for use in military camps does not exempt the ice cream from the gallonage tax.

TAXATION: TANGIBLE PERSONAL PROPERTY; COTTON STORED IN
NORTH CAROLINA BUT OWNED BY A NONRESIDENT

3 May, 1943.

Cotton stored in North Carolina but owned by a nonresident is subject to ad valorem taxation in North Carolina.

WORKMEN'S COMPENSATION ACT: COUNTY A. B. C. BOARD;
REJECTION OF ACT

3 May, 1943.

The fact that the Board of County Commissioners of a County has rejected the Workmen's Compensation Act, does not operate as a rejection of the Act in so far as the County A. B. C. Board is concerned.

CRIMINAL LAW: APPEARANCE BONDS; DISPOSITION OF PROCEEDS
FROM FORFEITED BOND

15 May, 1943.

The proceeds from a forfeited appearance bond in a criminal case should be paid into the county school fund.

CRIMINAL LAW: CONCEALED WEAPONS; CONFISCATION; DELIVERY TO
MILITARY AUTHORITIES

14 May, 1943.

Under C. S., Sec. 4410, it is required that, when a person is convicted of carrying a concealed weapon, the weapon shall be condemned and ordered confiscated and destroyed. This section requires that confiscated weapons be destroyed. It does not authorize delivery of such weapons to military authorities.

CRIMINAL LAW: COSTS; JAIL FEES; RIGHT TO REQUIRE DEFENDANT TO
PAY BEFORE CONVICTION

18 May, 1943.

A jailer has no authority to refuse to release a defendant on bail before trial until jail fees covering the time the defendant has spent in jail are paid. Until the defendant has pleaded guilty or been convicted of a crime, he will not be responsible for any expenses incurred in keeping him in jail.

FERTILIZER: INSPECTION TAX

31 May, 1943.

Fertilizer purchased by the Federal Government outside of North Carolina and shipped to a military reservation in North Carolina for use of the Government thereon, is not subject to the North Carolina Fertilizer Inspection Tax.

INTOXICATING LIQUORS: BEER AND WINE; ISSUANCE OF LICENSE TO
NONRESIDENT

20 May, 1943.

A Board of County Commissioners has no authority to issue a license to sell beer and wine at retail to a person who is not a resident of North Carolina.

INTOXICATING LIQUORS: BEER AND WINE; ISSUANCE OF LICENSE TO
UNNATURALIZED ALIEN

20 May, 1943.

A license to sell beer and wine at retail may not be lawfully issued to an unnaturalized alien.

INTOXICATING LIQUORS: BEER AND WINE; REFUSING TO ISSUE LICENSE TO
APPLICANT CONVICTED OF DRIVING DRUNK

19 May, 1943.

Municipal authorities may not refuse to issue a license to sell wine and beer to an applicant because he has been convicted of operating a motor vehicle while under the influence of intoxicating liquor.

MOTOR VEHICLES: PERSONS UNDER 16 AND OVER 15 YEARS OF AGE;
JUVENILE COURT ACT

14 May, 1943.

The juvenile and domestic relations courts have no jurisdiction over offenses relating to operation of motor vehicles when committed by persons fifteen years of age or older. Persons who are under sixteen years of age and fifteen years of age or older, who are permitted to operate motor vehicles under a 1943 statute, may be tried and punished in the same manner as adults. The Juvenile Court Act has no application.

MOTOR VEHICLES: SPEED LAWS; FEDERAL EMPLOYEE; MILITARY
PERSONNEL

20 May, 1943.

Federal employees are not exempt from the North Carolina Speed Laws when driving in North Carolina. However, persons in the military services may not be prosecuted for violating the state speed laws when such violation is a matter of military necessity; he may if it is not a matter of military necessity.

MUNICIPAL CORPORATIONS: DISSOLUTION; EFFECT OF FAILURE TO
HOLD ELECTION

19 May, 1943.

Failure to hold the regular municipal election does not result in the forfeiture of the charter and the cessation of the corporate existence of a town.

TAXATION: AD VALOREM; REDUCTION OF TAXES WHERE PROCEEDS OF
SALE TO MAKE ASSETS INSUFFICIENT

17 May, 1943.

County commissioners have no authority to reduce the amount of ad valorem taxes due from the estate of a decedent when the proceeds from the sale of realty to make assets are insufficient to pay the taxes.

VAGRANCY: COMPELLING UNEMPLOYED PERSONS TO WORK

19 May, 1943.

There is no procedure under the laws of this State whereby municipal officials can compel unemployed persons to work during the present emergency. However, if such persons are vagrants or tramps within the meaning of C. S., Secs. 4459 and 4464, they may be prosecuted and punished.

BEER AND WINE: SALES IN VIOLATION OF H. B. 180

14 April, 1943.

Sales of beer and wine between the hours of 11:30 p.m. and 7 a.m. are prohibited by House Bill 180 of the 1943 General Assembly. One convicted of violating the provisions of this Act should have his license revoked. The Act provides that the license shall be revoked, thus giving no discretion in the matter to anyone.

COUNTIES: RESALE OF PROPERTY ACQUIRED AT TAX FORECLOSURE SALE

29 May, 1943.

A county may resell property purchased at a tax foreclosure sale at private sale, and, in the absence of collusion, such sale will convey such title as the county owns.

COUNTIES: PROVIDING SPACE FOR STATE OFFICERS

10 May, 1943.

A county has no authority to rent an office and allow the agent or deputy of the Department of Revenue to use it. Such an expenditure would not be for a county purpose.

JURORS: EXEMPTION FROM JURY DUTY; BUS DRIVERS

25 May, 1943.

The General Assembly has not passed any statute exempting bus drivers from jury duty.

MARRIAGE LAWS: CEREMONY PERFORMED IN COUNTY OTHER THAN ONE IN WHICH LICENSE ISSUED

31 May, 1943.

A minister or other officer authorized to perform marriage ceremonies is not authorized to perform a marriage ceremony in one county on a license issued by a Register of Deeds of another county in North Carolina. However, if the marriage were so performed, it would not be a void marriage.

MUNICIPAL CORPORATIONS: FIRE PROTECTION OUTSIDE CITY LIMITS

21 May, 1943.

By statute, Municipal Corporations are authorized to agree to furnish protection against fire to property within an area of not more than twelve miles from the city limits, upon such terms as such governing body may determine.

OFFICERS: NOTARIES PUBLIC; AGE

29 May, 1943.

To be a Notary Public, one must be twenty-one years of age.

RAILROADS: EMPLOYEES; DIESEL ENGINES

25 May, 1943.

There is no statute in North Carolina requiring firemen on Diesel engines.

TAXATION: POLL TAX; MEMBERS OF ARMED FORCES

14 May, 1943.

H. B. 36 of the 1943 General Assembly relieves persons inducted into the armed forces from all liability for poll taxes due at the time of their induction.

TAXATION: PRIVILEGE TAXES; MUNICIPAL CORPORATIONS; PHYSICIANS SELLING DRUGS DIRECTLY TO THEIR PATIENTS

5 May, 1943.

Municipal corporations are prohibited by statute from levying a privilege tax on physicians who carry stocks of medicines and sell the same directly to their patients.

TAXATION: SALES TAX; MEALS SERVED BY A LODGE TO ITS MEMBERS

27 May, 1943.

Where a fraternal lodge purchases food and has it prepared by its own cook on its own equipment and serves the food at no profit to its own members only to encourage attendance at meetings, and serves the meals in its own hall, there is no liability for sales tax thereon.

TAXATION: SALES AND USE TAX; HOME GUARD

26 May, 1943.

Purchases of supplies and equipment by units of the State Guard for official use are not subject to North Carolina Sales and/or use taxes. However, when the State Guard purchases gasoline, it must pay the state tax thereon as there is no exemption therefrom.

TAXATION: SALES AND USE TAXES; SALES OF UNIFORMS TO
NAVAL OFFICERS

19 May, 1943.

Merchants designated by the navy to sell certain quantities and kinds of uniforms, stocked on the Navy's order, and purchased and sold at the Navy price, are not exempt from State sales or use tax with respect to sales of such uniforms and equipment.

TAXATION: AD VALOREM; EFFECT OF FAILURE TO JOIN MUNICIPALITY IN
FORECLOSURE SUIT BROUGHT BY COUNTY

10 June, 1943.

The lien of a municipality for ad valorem taxes is not impaired by a foreclosure suit instituted by a county if the municipality is not made a party to the suit. If the municipality is made a party, its lien may be extinguished, but the proceeds of the sale will be prorated between the city and county, if appropriate pleadings are filed.

UNITED STATES LANDS: ACQUISITION OF EXCLUSIVE JURISDICTION

10 June, 1943.

Although the State has given consent to the acquisition of exclusive jurisdiction by the United States over land in this State acquired for governmental purposes, the cession of exclusive jurisdiction is not complete under the decision of the United States Supreme Court in *Adams v. United States*, until jurisdiction has been accepted by the United States. Ordinarily acceptance of exclusive jurisdiction by the United States would be indicated by the filing of a notice or declaration in the Governor's office.

RETIREMENT SYSTEM: BOARD OF BARBER EXAMINERS

9 June, 1943.

Members and employees of the Board of Barber Examiners are State employees as defined in the Teachers and State Employees Retirement Act.

MARRIAGE: MINORS; CONSENT OF PARENTS

9 June, 1943.

Before a marriage license may be issued for a minor between the ages of sixteen and eighteen who is living with his or her father and mother the consent of the father in writing must be delivered to the register of deeds. The consent of the mother would not give the register of deeds authority to issue a license, although her consent would be sufficient if the father were dead.

NOTARIES PUBLIC: ADMINISTRATION OF OFFICIAL OATHS

9 June, 1943.

A notary public is not authorized to administer the oath of office to a public official.

ADOPTION: DOMICILE OF PETITIONER

9 June, 1943.

A person who has not been domiciled in North Carolina for twelve months is not qualified to institute an adoption proceeding as petitioner.

COUNTIES: MATERNITY HOSPITALS; TAXES; NECESSARY EXPENSE

4 June, 1943.

A maternity hospital is not a necessary expense, and a county may not levy a tax for the erection and maintenance of such a hospital without a vote of the people.

REFORMATORIES: STONEWALL JACKSON TRAINING SCHOOL;
SEGREGATION OF RACES

4 June, 1943.

Indian inmates of the Stonewall Jackson Training School should be segregated and instructed separately from the white inmates.

JUSTICES OF THE PEACE: REPORTS

2 June, 1943.

A justice of the peace is required to file, on or before Monday of every term of the Superior Court of his county, a report consisting of a list of the names and offenses of all parties tried before him in cases finally disposed of and the papers in each criminal case since the last term of the Superior Court.

The justice is also required to assess and collect additional costs for the Officers' Benefit Fund and, on or before the first day of each month, to transmit such additional costs with the name of the case in which taxed to the Clerk of the Superior Court.

NOTARIES PUBLIC: VALIDITY OF ACKNOWLEDGMENT WHEN FEE NOT PAID

1 June, 1943.

The validity of the acknowledgment of an instrument before a notary public is not impaired by the fact that the fee is not paid.

BEER AND WINE: MUNICIPAL CORPORATIONS; HOURS OF SALE

14 June, 1943.

Municipalities have no authority to prescribe hours different from those prescribed in Chapter 339 of the Session Laws of 1943 for the sale of beer and wine on week days.

BEER AND WINE: SALE TO INTOXICATED PERSONS

14 June, 1943.

It constitutes a violation of law knowingly to sell beer or wine to a person who is in an intoxicated condition.

MARRIAGE: MISCEGENATION; MARRIAGE BETWEEN WHITE
PERSON AND FILIPINO

25 June, 1943.

The miscegenation statutes of this state do not prohibit a marriage between a white person and a person of the Filipino race.

MILITARY PERSONNEL: SURRENDER BY CIVIL TO MILITARY AUTHORITIES

30 June, 1943.

In time of war the military authorities have paramount right to the custody of persons in the armed forces. Upon request by his commanding officer, civil authorities should surrender to the military authorities a person in military service who has been arrested for commission of crime.

MUNICIPAL CORPORATIONS: CITY CLERKS; ADMINISTRATION OF OATHS

10 June, 1943.

A city clerk has no authority to administer oaths.

MUNICIPAL CORPORATIONS: GOVERNING BODY; FILLING VACANCIES;
QUORUM

19 June, 1943.

Vacancies which occur in the membership of the governing body of a municipal corporation may be filled by the remaining members.

A quorum for the purpose of filling a vacancy is a majority of the remaining members of the governing body.

MUNICIPAL CORPORATIONS: TAXICABS; TAXATION

15 June, 1943.

In addition to the regular \$1.00 tax on all motor vehicles, a municipality may collect a tax not exceeding \$15.00 on each vehicle operated in the city as a taxicab.

SCHOOLS: PURCHASE OF SCHOOL SITE; VERBAL CONTRACT; EMINENT
DOMAIN

22 June, 1943.

A verbal contract to convey real property to a county board of education as an addition to a school site is unenforceable, for contracts

for the sale of real property must be in writing. Where no agreement can be reached between a county board of education and the owner of real property, the property may be condemned as an addition to a school site.

STATE HIGHWAY PATROL: FEE FOR SEIZURE OF MOTOR VEHICLE
LOADED WITH LIQUOR

18 June, 1943.

Members of the State Highway Patrol are not entitled to fees for the seizure of vehicles transporting liquor illegally.

TAXATION: LIABILITY OF OFFICERS' MESS FOR GROSS RECEIPTS TAX

28 June, 1943.

The Officers' Mess, operated on a Government Reservation, is a Federal agency and the gross receipts tax imposed by the North Carolina Revenue Act is not applicable to charges made for laundering linen or furnishing linen used in said Officers' Mess.

JAILS: CONFINEMENT OF DELINQUENT CHILDREN

12 June, 1943.

Delinquent children may not be confined in jail. However, the prohibition against confinement of delinquents in jail does not prevent confinement of a juvenile over fourteen bound over to the Superior Court on a charge of a felony or a juvenile over fifteen charged with a violation of the motor vehicle laws in jail.

JUSTICES OF THE PEACE: TIME FOR QUALIFICATION

14 June, 1943.

Justices of the Peace appointed by the General Assembly under Chapter 779 of the Session Laws of 1943 should qualify within ninety days after April 1, 1943.

MORTGAGES AND DEEDS OF TRUST: COUNTIES AND MUNICIPALITIES;
PUBLIC PROPERTY

28 June, 1943.

Counties and municipalities have no authority to mortgage public property.

MOTOR VEHICLES: REVOCATION OF DRIVER'S LICENSE OF PERSON
CONVICTED IN ANOTHER STATE

14 June, 1943.

When a resident of North Carolina is convicted in another state of an offense which, if committed in this state, would be ground for revoking or suspending his driver's license, his license may be revoked or suspended by the Department of Motor Vehicles in this state for the same period as if the offense had been committed in North Carolina.

MUNICIPAL CORPORATIONS: APPOINTMENT OF POLICEMEN

25 June, 1943.

In the absence of a special charter provision authorizing it, the mayor of a town is not empowered to appoint policemen. Policemen may be appointed by the board of commissioners.

MUNICIPAL CORPORATIONS: BOARD OF ALDERMEN; INCREASE IN
COMPENSATION

23 June, 1943.

The Board of Aldermen of a municipal corporation have no authority to enact an ordinance increasing salaries of members of the board which is to become effective during the current term of office.

SCHOOLS: LUNCH ROOMS; TAXATION

23 June, 1943.

The trustees of school committees of schools may establish lunch rooms or cafeterias in schools if they deem it advisable and necessary because of the distance of schools from places where meals may be easily obtained. State appropriations for schools may not be used to establish and maintain lunch rooms and cafeterias, but the expense of such projects may be included in local school budgets, and they may be supported by local taxation.

TAXATION: AD VALOREM; REMEDIES AGAINST PERSONAL PROPERTY

17 June, 1943.

Payment of ad valorem taxes may be enforced by levy or attachment against personal property at any time after the taxes become due and before the filing of a complaint in an action for foreclosure or before the docketing of a judgment for taxes as provided in Section 1720 of the Machinery Act. The right to enforce payment by remedies against personal property is not lost as a result of sale of the tax lien and issuance of a tax sale certificate.

TAXATION: AD VALOREM; VALUATION; CHANGE BECAUSE OF FIRE LOSS

26 June, 1943.

The Board of County Commisiosners has no authority to change the valuation placed on property for the current year because of a partial loss by fire during the year and subsequent to the tax listing date. If the loss is more than \$100.00, the valuation for the next year's taxes could be changed.

ACKNOWLEDGMENTS: BEFORE OFFICERS IN MILITARY SERVICES

2 July, 1943.

Acknowledgments of instruments required or permitted to be recorded may be made before any officer of the Army or Marine Corps having the rank of Captain or higher, any officer of the Navy or Coast

Guard having the rank of Lieutenant Senior Grade or higher, or any officer of the Merchant Marine having the rank of Lieutenant Senior Grade or higher.

AGRICULTURE: COMMERCIAL FEEDING STUFFS; INSPECTION;
INSPECTION IN RAILWAY CARS

9 July, 1943.

The Commissioner of Agriculture has the right to inspect concentrated commercial feeding stuffs for the purpose of ascertaining if such stuffs comply with the North Carolina law relating thereto, while such stuffs are still in the railway cars.

CLERKS OF COURT: COMMISSIONS; FINES

6 July, 1943.

The clerks of the Superior Court are not entitled to deduct a commission from fines collected.

CLERKS OF COURT: FEES AND COMMISSIONS; LAW ENFORCEMENT
OFFICERS BENEFIT AND RETIREMENT FUND

2 July, 1943.

The clerk of the Superior Court is not entitled to a commission on the \$2.00 item assessed for the use of the Law Enforcement Officers' Benefit and Retirement Fund.

CRIMINAL LAW: RIGHT OF ACCUSED TO BE REPRESENTED BY COUNSEL;
WHEN APPOINTED BY COURT

13 July, 1943.

While an accused is entitled to counsel in all criminal actions, counsel is only assigned by the court to represent the defendant when he is charged with a capital offense.

EXTRADITION: PAYMENT OF EXPENSES

23 July, 1943.

In extradition proceedings, where the crime for which the person is being extradited is a felony, the State pays the expenses, but, where the crime is a misdemeanor, the expense is to be paid out of the treasury of the county where the crime is alleged to have been committed.

HEALTH: JOINT COUNTY AND CITY HEALTH DEPARTMENT

8 July, 1943.

Counties and cities may appropriate public monies and levy taxes for the maintenance and operations of boards of health which were created prior to March 15, 1941, and are existing as joint city and county boards of health.

INTOXICATING LIQUORS: VEHICLES SEIZED WHILE TRANSPORTING LIQUOR

13 July, 1943.

When a motor vehicle is seized while transporting liquor, the seizing officer is not permitted to make any use of the vehicle. He should store the vehicle in a safe and suitable place until final disposition is made.

MARRIAGE: COMMON-LAW MARRIAGES

15 July, 1943.

Common-law marriages may not be celebrated in the State of North Carolina.

MARRIAGE: MARRIAGE BY PROXY

15 July, 1943.

A marriage by proxy may not be celebrated in North Carolina, but if legal where celebrated, it would probably be recognized here.

MINORS: WORKING IN ESTABLISHMENTS WHERE WINE AND BEER IS SOLD

3 July, 1943.

The statutes of North Carolina prohibit the employment of minors in, about or in connection with any establishment where alcoholic liquors are bottled, sold, brewed or manufactured. However, the 1943 General Assembly authorized minors under 18 to be employed in establishments where beer is sold and not consumed on the premises and the establishment operates under an "off-premises" license for the sale of beer.

MUNICIPAL CORPORATIONS: CURFEW ORDINANCES

10 July, 1943.

A municipal corporation has no authority to adopt an ordinance requiring all children under 16 years of age to be off the streets by ten o'clock p.m., unless on a lawful mission or errand under the direction of their parents or guardians.

MUNICIPAL CORPORATIONS: POOL ROOMS, PROHIBITING MINORS
UNDER 18 FROM PLAYING

3 July, 1943.

A municipal corporation has power to prohibit minors under eighteen years of age from entering or remaining in pool rooms unless accompanied by the parents or guardian of such minor.

SALES: PARTITION SALES; INCREASED BIDS

15 July, 1943.

In judicial sales of land where the statutory time for accepting increased bids has expired, the court may nevertheless order a resale if an increased bid is made before the proposed purchaser moves for an acceptance of his bid.

SCHOOLS: TRANSPORTATION OF CHILDREN

22 July, 1943.

The organization, maintenance and operation of school transportation facilities is under the direction and supervision of the State Board of Education and not the county boards of education.

TAXATION: BEAUTY SHOPS; CITIES AND TOWNS

16 July, 1943.

Cities and towns are authorized to levy a tax on beauty parlors not in excess of that levied by the State. The amount of the State tax was reduced from five dollars to two dollars and fifty cents by the 1943 General Assembly.

TAXATION: COLLECTION OF TAXES; GARNISHMENT

19 July, 1943.

The wages of an individual are subject to garnishment for the payment of State and county taxes.

TAXATION: THEATRICAL COMPANIES; COUNTIES

8 July, 1943.

A theatrical company licensed by the State and charging not more than fifty cents admission at the door and a reserved seat, may not be charged a county license tax of more than ten dollars per week, regardless of the fact that performances are given in several different towns within the county during the week.

UNIFORM DRIVER'S LICENSE ACT: APPLICATION TO TENNESSEE
VALLEY AUTHORITY EMPLOYEES

2 July, 1943.

An employee of the Tennessee Valley Authority cannot be compelled to secure a driver's license in this State on account of his operation of an automobile owned by the Authority and used in the conduct of its official business.

CHANGE OF NAME: RESIDENCE REQUIREMENT

3 July, 1943.

A person must be a legal resident of a county in order to be eligible to file a petition before the clerk of the superior court for the change of his name.

JUSTICES OF THE PEACE: JURISDICTION; SPEED LAWS

6 August, 1943.

A justice of the peace does not have final jurisdiction of an offense of violating the motor vehicle laws relating to speed.

MARRIAGE LAWS: CHANGING NAMES ON THE RECORDS

5 August, 1943.

The register of deeds has no authority to make changes in names on marriage licenses after the licenses have been issued.

MUNICIPAL CORPORATIONS: ADVERTISING

3 August, 1943.

After a vote of the people, a county, city or town may levy a tax and appropriate money for the purpose of advertising the county, city or town so as to encourage the locating of industrial and commercial plants therein. The amount expended shall not exceed one-tenth of one per cent and not be less than one-fourth of one per cent upon the assessed valuation of taxable property.

MUNICIPALITIES: FIRE EQUIPMENT; LOSS OF PROPERTY WITHIN
MUNICIPALITY WHILE FIRE EQUIPMENT IS FIGHTING
FIRE OUTSIDE OF MUNICIPALITY

2 August, 1943.

A municipality, in providing water throughout the city for fighting fires, is not exercising a private or corporate duty arising out of contract but it is exercising a governmental function and is not liable for any damage to a citizen by reason of a failure to perform such duty or to perform it properly.

OFFICERS: DEPUTY CLERK OF SUPERIOR COURT; AGE

9 August, 1943.

Since the position of deputy clerk of the superior court is an office, one must be twenty-one years of age before one is entitled to hold such position.

TAXATION: AUTOMOBILES FROZEN BY FEDERAL GOVERNMENT

9 August, 1943.

The county commissioners are authorized to reduce, for the purpose of taxation, the valuation of motor vehicles, the sale of which is subject to priorities, rationing and restrictions by the Federal Government regulations on account of the war.

TAXATION: LISTING WITH LOCAL AUTHORITIES; RAILROADS

9 August, 1943.

Railroads are not required to list for local taxation railroad stations, freight warehouses, and the real estate upon which they are erected, where such property is necessary for the construction and successful operation of the railroad or are used in the daily operation of the railroad.

TAXATION: MOTOR VEHICLE DEALERS

9 August, 1943.

Cities, towns and counties may levy a tax of \$300.00 for each location on seasonal, temporary, transient, or itinerant dealers in used motor vehicles.

TOBACCO: SALE OF UNTIED TOBACCO

12 August, 1943.

There is no law in North Carolina which prohibits the sale of untied tobacco on warehouse floors.

CITIES AND TOWNS: ORDINANCES; SMOKING IN THEATERS

3 September, 1943.

A town has ample authority to adopt an ordinance regulating smoking and over-crowding in theaters.

CRIMINAL LAW: SELLING CIGARETTES TO MINORS

16 August, 1943.

It is a violation of the criminal laws of the State of North Carolina to sell cigarettes or tobacco to be used as a substitute for cigarettes to a minor under 17 years of age.

CRIMINAL LAW: THEFT OF AUTOMOBILE BY MINOR 15 YEARS OF AGE

28 August, 1943.

Where a person charged with the theft of an automobile is only 15 years of age, he must be tried by the juvenile court.

DIVORCE: WAITING PERIODS BEFORE REMARRIAGE

13 September, 1943.

In North Carolina there is no period of time which must elapse between the granting of a final divorce and the remarriage of the parties. Either party may marry at any time after the signing of the judgment by the judge.

INSANE PERSONS AND INCOMPETENTS: ADMISSION OF FEEBLE-MINDED TO STATE HOSPITAL AT RALEIGH

18 September, 1943.

Feeble-minded persons should not be admitted to the State Hospital at Raleigh. Admission to the Hospital should be restricted to those persons with acquired insanity or other types of mental derangement.

JUSTICES OF THE PEACE: JURISDICTION; PROCESS RETURNABLE BEFORE JUVENILE JUDGE

16 September, 1943.

A Justice of the Peace does not have jurisdiction to issue process returnable before the judge of the juvenile court.

MOTOR VEHICLES: PARKING CARS IN FRONT OF PRIVATE DRIVEWAYS

16 August, 1943.

It is a violation of a State law to park a motor vehicle upon a highway in front of a private driveway or within fifteen feet of a fire hydrant or the entrance to a fire station. Local authorities may decrease the distance within which a vehicle may park in either direction of a fire hydrant.

TAXATION: EXEMPTIONS; VETERANS OF SPANISH AMERICAN WAR

27 August, 1943.

There is no exemption from taxation of the personal property of veterans of the Spanish American War and such property is subject to tax and sale under execution to the same extent as other property.

TAXATION: REMEDIES

2 September, 1943.

A tax collector has no authority to levy on the personal property of a taxpayer after a tax foreclosure complaint has been filed against the real property of such taxpayer.

ADOPTION: ALIEN RESIDENT OF NORTH CAROLINA

15 October, 1943.

An unnaturalized person who has been a resident of North Carolina for a year is authorized to institute a proceeding to adopt a child in North Carolina.

COUNTIES AND COUNTY COMMISSIONER: PAYING RENT FOR OFFICE FOR STATE HIGHWAY PATROL

16 September, 1943.

County Commissioners have no authority to pay the rent for an office for the use of the State Highway Patrol in their County.

COUNTY COMMISSIONERS: TOWNSHIPS; AUTHORITY TO DIVIDE OR CONSOLIDATE

8 October, 1943.

The Board of County Commissioners has authority to divide or consolidate townships within the county.

DIVORCE: INSANITY; SEPARATION

4 October, 1943.

Insanity is not a ground for divorce in the State of North Carolina, and separation of a husband and wife because of the confinement of one or the other in the State Hospital is not a separation within the meaning of the North Carolina Statutes.

INTOXICATING LIQUORS: DISPOSITION OF CONFISCATED AUTOMOBILE

15 October, 1943.

When automobiles are confiscated because they have been used in transporting intoxicating liquors, they must be sold at public auction. There is no authority to sell such vehicles at a private sale.

MOTOR VEHICLES: INTERCITY BUSES; STATIONS

30 September, 1943.

Authority to require bus companies to maintain stations and to designate the towns and cities in which such stations shall be maintained is vested in the Utilities Commission and not in municipal corporations.

MUNICIPAL CORPORATIONS: TAXICABS; TAXATION

28 September, 1943.

The operator of a taxicab which is operated from headquarters in a town may be required to secure municipal license plates and to pay the license fees imposed by the municipality even though the operator, himself, resides outside the town.

POLICE OFFICERS: ARREST OF PERSONS UPON SUSPICION OR FOR INVESTIGATION

8 October, 1943.

Police officers have no authority to arrest a person upon suspicion only or for the purpose of investigation.

REGISTER OF DEEDS: AFFIDAVITS; ADMINISTRATION OF OATHS

30 September, 1943.

A register of deeds has no authority to administer an oath to a person who is making an affidavit as to facts that have no bearing upon his duty as register of deeds.

SCHOOLS: COMPULSORY ATTENDANCE

14 October, 1943.

It is still the duty of the county Superintendent of Public Welfare to investigate and prosecute all violators of the compulsory attendance law, except in counties which have appointed special attendance officers.

TAXATION: INHERITANCE TAXES; CO-OWNERS OF WAR BONDS

6 October, 1943.

So much of the value of a war bond, purchased in the name of two persons as co-owners, as was purchased by funds of the deceased co-owner, must be included in his estate for purposes of computing inheritance tax.

UNEMPLOYMENT COMPENSATION: CONTRIBUTIONS; STATUTE OF
LIMITATIONS

20 September, 1943.

The General three-year statute of limitations has no application to the collection of unemployment compensation contributions.

BANKS AND BANKING: SAFETY DEPOSIT BOXES; CARE REQUIRED OF BANK

28 October, 1943.

The relationship between a customer renting a safety deposit box and a bank is that of bailor and bailee, the bailment being for hire or mutual benefit. The bank as bailee is required to use ordinary care and diligence in safeguarding the safety deposit box and its contents.

BUILDING AND LOAN ASSOCIATIONS: LOANS LIMITED TO MEMBERS

19 October, 1943.

A building and loan association has no authority to lend money to a person who is not a member of the association. Such an association has no authority to purchase mortgages executed in favor of another corporation.

CRIMINAL LAW: JURISDICTION OF JUSTICE OF THE PEACE TO TRY ONE
ACCUSED OF VIOLATING A PROCLAMATION OF THE GOVERNOR

29 October, 1943.

A justice of the peace does not have jurisdiction to try a person accused of violating a proclamation of the Governor, issued pursuant to the Emergency War Powers Act, unless the proclamation expressly provides that the punishment for a violation thereof is such as to bring it within the jurisdiction of a justice of the peace, to wit: A fine of not more than \$50.00 or imprisonment for not more than thirty days.

CRIMINAL LAW: JUVENILES; PERSONS OVER SIXTEEN YEARS OF AGE

20 October, 1943.

A person sixteen years of age or over is considered an adult for purposes of responsibility for crime. When an offender has reached this age at the time of the commission of an offense, the juvenile court has no jurisdiction over him.

CRIMINAL LAW: LARCENY OF AUTOMOBILE; JURISDICTION OF
JUVENILE COURT

18 October, 1943.

Under C. S., Secs. 5038-5062, the juvenile court has jurisdiction over a person fifteen years old charged with larceny of an automobile.

Larceny of an automobile is an offense under the general criminal statutes. It is not a violation of the motor vehicle laws such that jurisdiction is removed from the juvenile court to the superior court by virtue of Chapter 760 of the Session Laws of 1943 when the offender is over fifteen years of age.

CRIMINAL LAW: PROCESS TAX; INFERIOR COURTS

12 October, 1943.

The process tax of two dollars imposed against persons convicted of criminal offenses in the superior court under Section 157 of the Revenue Act is not due in cases instituted and finally disposed of in courts inferior to the superior court.

DIVORCE: SEPARATION FOR SEVEN YEARS; NO AUTOMATIC DIVORCE

20 October, 1943.

Married persons are not automatically divorced in North Carolina by separation for seven years. Persons are never automatically divorced in this state by any separation, however long. Divorces are granted only in civil actions in courts of proper jurisdiction.

EXECUTORS AND ADMINISTRATORS: FINAL ACCOUNTS; AUTHORITY OF PERSONAL REPRESENTATIVE WHEN ASSETS DISCOVERED AFTER FILING OF FINAL ACCOUNT

28 October, 1943.

When a personal representative of a deceased person has not been formally discharged, although he has filed a final account which has been approved by the clerk, he may take possession of and administer newly discovered assets of the deceased person without obtaining new letters of administration.

PUBLIC CONTRACTS: COMPETITIVE BIDDING; CONTRACT WITH ARCHITECT

18 October, 1943.

Under N. C. Code Ann. (Michie, 1939), Sec. 1316(a), contracts of counties, cities, and other subdivisions of the State for construction or repair work or for the purchase of apparatus, supplies, materials or equipment involving an expenditure in excess of \$1,000 cannot be let unless competitive bids have been invited by advertisement as provided in the statute.

A contract made by a county board of education with an architect for the preparation of plans and specifications and for the supervision work done thereunder, if and when performed, is not a contract within the scope of the section even though the architect's fee exceeds \$1,000.

TAXATION: AD VALOREM; LIEN AGAINST PERSONAL PROPERTY; LEVY

18 October, 1943.

Ad valorem taxes do not constitute a lien upon personal property of the taxpayer in the absence of a levy. If the owner of personal property transfers it by a bona fide sale after taxes against him are due but before levy, such property in the hands of the purchaser is not subject to any lien for taxes owned by the seller.

TAXATION: AD VALOREM; PERSONAL PROPERTY EXEMPTION; SCIENTIFIC
INSTRUMENTS; DENTISTS' TOOLS

23 October, 1943.

Dentists' tools are scientific instruments within the meaning of the exemptions allowed by Subsection 8 of Section 601 of the Machinery Act.

BEER AND WINE: CONSUMPTION AFTER MIDNIGHT

4 November, 1943.

Under Ch. 339 of the Session Laws of 1943, consumption of beer and wine in any place under the control of, or being operated by, a person licensed to sell beer or wine is forbidden between the hours of 12:00 midnight and 7:00 a.m. This prohibition does not apply to consumption of beer and wine upon premises which are neither operated nor controlled by a person licensed to sell beer or wine.

CLERKS OF THE SUPERIOR COURT: FEES IN CONNECTION WITH
INHERITANCE TAXES

22 November, 1943.

A clerk of the superior court is personally entitled to the fees collected by him in connection with inheritance tax reports. Sec. 20 of the Revenue Act provides that the clerk shall be allowed these fees in addition to other fees or salary received by him.

ELECTION LAWS: CANDIDATES; PERSONS IN ARMED FORCES

8 November, 1943.

There is no statute in North Carolina which prevents a person in the armed forces from becoming a candidate for public office, although he may experience difficulty in qualifying if elected.

MOTOR VEHICLES: MILITARY PERSONNEL; DRIVING GOVERNMENT VEHICLE
AFTER REVOCATION OF LICENSE

23 November, 1943.

The laws of this State do not prohibit a service man from driving a car owned by the United States Government upon the highways of this State in pursuit of his military duties, although such person's driver's license has been revoked for driving under the influence of intoxicating liquors.

MUNICIPAL CORPORATIONS: ABATTOIR; OPERATION OUTSIDE COUNTY

1 November, 1943.

A municipal corporation has no authority to operate an abattoir within the corporate limits of another municipality located outside the county.

MUNICIPAL CORPORATIONS: FORTUNE TELLERS AND PHRENOLOGISTS;
PROHIBITING PRACTICE

20 November, 1943.

A municipal corporation has no statutory authority to prohibit fortune tellers and phrenologists from operating in the city.

MUNICIPAL CORPORATIONS: SPECIAL ASSESSMENTS; OFF-SETTING COST OF
PRIVATELY BUILT SIDEWALKS AGAINST PAVING ASSESSMENT

24 November, 1943.

A municipal corporation has no authority to permit a person who, without authority from the municipality, has constructed a sidewalk in front of his property, to offset the cost of such sidewalk against his paving assessment.

NOTARIES PUBLIC: ACKNOWLEDGMENT BY PERSON RESIDING IN
ANOTHER STATE

9 November, 1943.

A non-resident may acknowledge a deed to North Carolina property before a notary public appointed and serving in North Carolina if he personally appears before the Notary Public in North Carolina for the purpose of such acknowledgment.

NOTARIES PUBLIC: BUILDING AND LOAN ASSOCIATIONS; AUTHORITY OF
NOTARY WHO IS OFFICER OF ASSOCIATION TO TAKE ACKNOWLEDGMENTS

5 November, 1943.

A notary public who is an officer of a building and loan association has authority to take acknowledgments of conveyances to the association if he is not himself a party to the conveyance.

REGISTERS OF DEEDS: FEES; RECORDING OFFICIAL DISCHARGE OF VETERAN

3 November, 1943.

A register of deeds is not entitled to charge any fee for the registration of the official discharge of a person from the military or naval forces of the United States.

TAXATION: MUNICIPAL PRIVILEGE TAXES; COLLECTION

1 November, 1943.

Persons who engage in business without paying the required municipal privilege taxes are guilty of a misdemeanor. They may be prosecuted criminally, and the amount of the unpaid taxes may be collected by a civil action.

COURTS: JUVENILE; ASSISTANT CLERK SUPERIOR COURT MAY SERVE AS
JUVENILE JUDGE; SALARY

6 December, 1943.

In the absence of a Public-Local Act to the contrary, the compensation of a Clerk of the Superior Court serving as Juvenile Judge is determined by the County Commissioners and is independent of any compensation which may go to him as Clerk of the Superior Court. A duly appointed Assistant Clerk of the Superior Court may serve as such Judge.

DIVORCE LAWS: MEN IN ARMED SERVICES; RESIDENCE

3 December, 1943.

Where a person from another state enters the armed forces of the United States and is sent to a military reservation in North Carolina

and, after arriving in this State, such person resides on the military reservation and has no intention of making North Carolina his home, he would not become a resident of this State, within the meaning of the divorce statute, which requires six months residence before the institution of a divorce action.

DOUBLE OFFICE HOLDING: TAX LIST-TAKER AND ASSESSOR; DEPUTY TAX COLLECTOR; BOTH PUBLIC OFFICES

9 December, 1943.

The offices of tax list-taker and deputy tax collector are both public offices within the constitutional prohibition against double office holding.

DOUBLE OFFICE HOLDING: TOWN COMMISSIONER AND TOWN CLERK

13 December, 1943.

When there is a charter provision so authorizing, a town commissioner may serve as town clerk and treasurer. In the absence of such charter provision, a commissioner who accepts the office of town clerk and treasurer vacates the office of commissioner.

INTANGIBLE TAX: RATE APPLICABLE TO CASHIER'S CHECK

2 December, 1943.

A cashier's check is an evidence of debt, and the intangible tax on it as such should be levied at the rate of fifty cents on the hundred dollars and not at the lower rate applicable to moneys on deposit.

INTOXICATING LIQUOR: DISPOSITION OF VEHICLE SEIZED WHILE TRANSPORTING LIQUOR IN VIOLATION OF LAW

3 December, 1943.

An automobile may be confiscated and ordered sold where its operator has been convicted of illegally transporting whiskey for the purpose of sale, even though all taxes on the whiskey thus transported have been paid.

MOTOR VEHICLES: TRANSFER OF FOR-HIRE LICENSE PLATES

10 December, 1943.

The Department of Motor Vehicles has no authority to transfer for-hire license plates, which have been issued to individuals or partnerships, to corporations later formed by such individuals or partnerships, since, in contemplation of law, such a transfer would be from one owner to another.

TAXATION: EXEMPTIONS; REAL PROPERTY OF LITTLE THEATER, INC.

7 December, 1943.

The real property of the Little Theater, Inc., of Charlotte, is exempt from local taxation as an educational institution, it being an institution devoted to training in dramatics and production of theatrical performances on a non-profit basis.

TAXATION: POLL TAX; MEMBERS OF ARMED FORCES; PERSONS
DISCHARGED FROM ARMED FORCES

17 November, 1943.

A person who enters the armed forces or merchant marine and is later discharged, is relieved from the payment of any and all poll taxes listed prior to his discharge. After his discharge, however, such person must list at the next listing period.

ADOPTION LAWS: RESIDENCE OF PETITIONERS: PERSONS IN
MILITARY SERVICE

6 December, 1943.

A man in military service, who is maintaining a home off the military reservation, who has his family living with him in North Carolina, and who has been living in North Carolina for a period in excess of one year, may file a petition for the adoption of an infant, provided he has the requisite intent to make North Carolina his permanent home.

ADOPTION LAWS: WHO MAY BE ADOPTED; ADULTS

29 December, 1943.

The North Carolina adoption law contemplates the adoption of minors only, and a person twenty-three years of age could not be legally adopted under its provisions.

AD VALOREM TAXATION: CIVIL ACTION FOR COLLECTION OF TAX;
REMEDIES AGAINST PERSONAL PROPERTY; GARNISHMENT

20 December, 1943.

A tax supervisor is not authorized to institute a civil action for debt against a person owing property taxes and issue an execution upon a judgment obtained in such an action. In proceedings against the salaries of school teachers for collection of money owed as taxes, garnishment notice should be served upon the chief financial officer of the school administrative unit.

DOUBLE OFFICE HOLDING: MEMBER BOARD OF COUNTY COMMISSIONERS
AND COUNTY FIRE WARDEN

6 December, 1943.

Membership on the board of county commissioners and county fire warden are both offices within the meaning of the constitutional prohibition against double office holding.

DOUBLE OFFICE HOLDING: TOWN POLICEMAN; CLERK IN TOWN
RECORDER'S COURT

11 December, 1943.

One may not hold the position of policeman of a town and at the same time serve as clerk in the town Recorder's Court.

DOWER: COMPUTATION OF CASH VALUE OF DOWER

23 December, 1943.

In computing the present cash value of a widow's dower the interest thereon should be figured at six per cent.

ELECTION LAWS: ESTABLISHMENT OR ALTERING OF ELECTION
PRECINCTS; NEW REGISTRATION

2 December, 1943.

A county board of elections has no power to create an election precinct containing territory located within the territorial boundaries of two different townships in the county. The county board of elections may divide a township into two voting precincts and decide in its discretion whether or not to order a new registration. If a township is divided into more than one township, the county board of elections must create at least one election precinct in each of the townships.

GUARDIAN AND WARD: BONDS; RELEASE OF SURETY BY CLERK
SUPERIOR COURT

30 December, 1943.

The clerk of the superior court may not release the surety on the bond of a guardian.

LIQUORS: PURCHASE OF CASE OUTSIDE STATE; SHIPMENT INTO STATE

16 November, 1943.

There is no legal way that a private individual may purchase a case of liquor outside this State and have it shipped to him in this State. The law authorizes an individual to bring into this State only one gallon of taxpaid liquor.

MARRIAGE LAWS: MINISTER PERFORMING CEREMONY

1 December, 1943.

An ordained minister who resides in foreign state may perform a marriage ceremony in North Carolina.

COUNTIES: SALE OF PROPERTY

31 December, 1943.

The board of county commissioners of a county may sell a tract of land belonging to the county and not being used for governmental purposes. The sale may be made without advertisement and need not be at public auction.

INTOXICATING LIQUORS: TURLINGTON ACT; APPLICABILITY TO WHISKEY
SEIZED AND UNLAWFULLY TRANSPORTED IN A. B. C. COUNTIES

21 December, 1943.

Tax-paid whiskey being illegally transported in any county of the State is subject to confiscation, whether the county be a beverage control county or a dry county.

JUSTICES OF THE PEACE: JURISDICTION; PLACE WHERE COURT MAY BE HELD

31 December, 1943.

A justice of the peace may hear a case outside the township for which he was elected or appointed, but may not be forced to do so.

MARRIAGE: PERFORMING MARRIAGE; JUDGE OF RECORDER'S COURT

15 December, 1943.

The judge of a county recorder's court is not authorized to perform a marriage ceremony.

MARRIAGE LAWS: MARRIAGES BY PROXY NOT RECOGNIZED;
HEALTH CERTIFICATE

29 December, 1943.

A marriage may not be celebrated by proxy in North Carolina.

INCOME TAX: MARRIED WOMEN; RETURN

11 December, 1943.

A married woman having a separate income must file a return if her net income (i.e., her gross income less allowable deductions) is one thousand dollars or over.

MINORS: BEER AND WINE; WORKING ON PREMISES WHERE BEER OR
WINE IS SOLD

14 December, 1943.

Minors under 18 are prohibited from working in or about an establishment in which beer or wine is sold except that they may work in establishments where beer is sold but not consumed on the premises and to which has been issued only an "off premises" license for the sale of beer

NOTARIES PUBLIC: ACKNOWLEDGING INSTRUMENT OF PARTNERSHIP
BEFORE A NOTARY WHO IS A MEMBER OF PARTNERSHIP

16 December, 1943.

Where an instrument is executed by a partnership and acknowledged by one of its members before a notary public who is a member of the partnership, the acknowledgment is void because the notary is interested and should not be admitted to probate by the clerk.

PAUPERS: BURIAL

13 December, 1943.

The provisions of our statutes providing for the support, comfort and well-being of the poor of the county are intended to include a proper burial for such persons who have no relations financially able to pay the burial expense and when no other provision has been made for such burial.

STREET ASSESSMENTS: CHURCH PROPERTY; EXEMPTIONS

13 December, 1943.

Property owned by a church and used as a parsonage for its minister is not exempt from liability for street assessments levied for the improvement of city streets.

TAXATION—POLL TAX: MEMBERS OF UNITED STATES ARMED FORCES
RELIEVED OF PAYMENT

21 December, 1943.

A person who was at any time a member of the United States armed forces after the declaration of the present war is entitled to exemption from payment of the poll tax, even though such person's services were terminated prior to the date of ratification of the act granting such exemption.

ESTATES: MOTHER INHERITS FROM ILLEGITIMATE CHILD

23 December, 1943.

Where an illegitimate child dies intestate, unmarried, and without issue, leaving as relatives both legitimate and illegitimate brothers and sisters, all born of the same mother, his personal estate should be distributed among his mother and all such persons as would be his next of kin if all such children had been born in lawful wedlock, and his real estate among his brothers and sisters.

AD VALOREM TAXATION: EXEMPTIONS; FARM PRODUCTS

31 January, 1944.

Under Sections 601 and 900 of the Machinery Act of 1939, as amended, tobacco and other farm products owned by and in the possession of the farmer producing same are exempt from taxation for the year following the year in which such products are grown.

AD VALOREM TAXATION: MUNICIPALITIES; TAXICABS; RIGHT TO COLLECT
TAX WHERE OWNERS LIVE OUTSIDE CORPORATE LIMITS

6 January, 1944.

Generally, tangible personal property is to be listed for taxation at the residence of the owner. But where taxicab operators who live outside the corporate limits of a city maintain their taxicab business within such corporate limits, the automobiles thus used acquire a taxable situs within the city, and are subject to ad valorem taxation by the city.

AUTOMOBILES: LICENSE FEES AND PERSONAL PROPERTY TAXES ON
VEHICLES OWNED BY NONRESIDENT MILITARY PERSONNEL
STATIONED IN THIS STATE

6 January, 1944.

Section 47 of the Motor Vehicle Act authorizes nonresidents to operate vehicles in this State, which are licensed in other states, for

the same length of time and to the same extent as like privileges are granted residents of North Carolina operating vehicles in such other states. Such reciprocity is extended to members of the armed forces. The Machinery Act of 1939, as amended, requires that tangible personal property owned by nonresidents shall be listed for taxation where the property is situated as of January 1 of each year. There is no exemption in favor of automobiles owned by members of the armed services.

BEER AND WINE: HOURS OF SALE AND CONSUMPTION

28 January, 1944.

A night club which serves meals and furnishes amusements, but to which admittance is confined to members and their guests, and which holds a license to sell beer or wine, is subject to the provisions of Session Laws 1943, c. 339, regulating the closing hours of establishments selling beer or wine.

COUNTIES: NECESSARY EXPENSE; BUILDING, MAINTENANCE AND OPERATION OF PUBLIC HOSPITAL NOT A NECESSARY EXPENSE

7 January, 1944.

The expenditure of county funds for the building, maintenance and operation of a public hospital is not a "necessary expense" of a county, and such expenditure is not authorized in the absence of an election to provide funds therefor.

CRIMINAL LAW: LARCENY; RATION BOOKS

28 January, 1944.

Ration books are things of value and proper subjects of larceny.

DOUBLE OFFICE HOLDING: DEPUTY REGISTER OF DEEDS; NOTARY PUBLIC

6 January, 1944.

A deputy register of deeds may not serve as a notary public without violating the constitutional prohibition against double office holding.

DOUBLE OFFICE HOLDING: MEMBER OF SELECTIVE SERVICE BOARD, SELECTIVE SERVICE DISTRICT APPEAL BOARD, AND APPEAL AGENT; ELECTION LAW OFFICES

4 January, 1944.

Members of either a local or district Selective Service board or Appeal Agents may hold public offices at the same time they are serving in their respective capacities as members of the United States Selective Service Boards or Appeal Agents, unless the statute creating such offices specifically prohibits such persons from holding other offices. Members of a Selective Service Board or United States District Board of Appeals or Appeal Agents may, at the same time, hold any election official office other than that of registrar and judge of elections.

INHERITANCE TAXATION: WAR BONDS

27 January, 1944.

Where War Bonds are purchased and issued to A or B as co-owners, and A or B dies, the North Carolina inheritance tax is imposed upon that portion of the bonds which were purchased with the funds of the decedent.

INTANGIBLE TAXES: INCOME TAXES; RESIDENCE OF TAXPAYER

27 January, 1944.

A person who resided in North Carolina about 60 per cent of the time during 1943 and who in later years will probably reside in this State about one-half of the time, has the burden of proving that he is not a resident of North Carolina, in so far as his liability for intangible and income taxation is concerned.

JUSTICES OF THE PEACE: FINES, PENALTIES, ETC., PAYMENT TO
WHAT OFFICER

20 January, 1944.

Justices of the peace should keep an itemized and detailed statement of the amounts received by them in the way of fines, penalties, forfeitures and amercements, and all such collections should be accounted for to the treasurer of the county within sixty days after the receipt thereof.

MARRIAGE: RIGHT OF MAYOR OF MUNICIPALITY TO PERFORM CEREMONY

8 January, 1944.

A mayor of a municipality has no authority to perform a marriage ceremony.

MUNICIPAL TAXATION: TAXATION OF PERSONS RESIDING ON
STATE PROPERTY

27 January, 1944.

Employees of the State of North Carolina, residing on State property located within the limits of a municipality, are not exempt from the payment of the municipal ad valorem tax on personal property and from the license for automobiles.

NATIONAL BANKS: TRUST DEPOSITS; LIABILITY FOR LICENSE TAX UNDER
C. S. 58-114 (C. S. 6377)

31 January, 1944.

A national bank situated in this state may not recover fees paid under C. S. § 58-114 (C. S. 6377), which requires corporations to pay an annual license fee of two hundred dollars for the privilege of serving in a fiduciary capacity without giving bond, where the payments were not made under protest, no proper demand for refund was made, and the bank availed itself of the privileges incident to such payment. It is not illegal for the State to accept voluntary payment of such fees by national banks.

SCHOOLS: COMPULSORY ATTENDANCE; ENFORCEMENT

6 January, 1944.

While a special attendance officer may request a child who is out of school to accompany the attendance officer to the school and, in attempting to secure the return of the child, may use the art of persuasion, he is not authorized to arrest the child or to use any physical force in securing the child's return to school.

SCHOOLS: SALE OF PROPERTY; DISPOSITION OF FUNDS

11 January, 1944.

When the proceeds of the sale of school property are deposited with the county treasurer as provided by statute, such proceeds become part of the capital outlay fund, which is to provide for the purchase of sites, the erection and alteration of school buildings, etc.

UNIFORM DRIVER'S LICENSE ACT: AUTHORITY TO SUSPEND ON
DEFENDANTS' FORFEITURE OF BAIL IN ANOTHER STATE

28 January, 1944.

Where a resident of North Carolina is arrested in South Carolina for driving an automobile under the influence of intoxicating liquors and posts an appearance bond which is subsequently forfeited by his failure to appear at the trial, the North Carolina Commissioner of Motor Vehicles has authority, under the provisions of the Uniform Driver's License Act, to suspend the defendant's North Carolina Driver's License.

AD VALOREM TAXATION: POLL TAX; LEVY BY COUNTIES AND
MUNICIPALITIES

29 January, 1944.

Under the Constitution, Art. V, sec. 1, and Section 1402 of the Machinery Act of 1939, counties may levy a poll tax of two dollars and a municipality may levy a poll tax of one dollar. A person residing within both the municipality and the county may be required to pay both.

AD VALOREM TAXATION: SALE ON TAX LIENS; SALE FEE

11 January, 1944.

A tax collector who collects taxes on a commission basis is entitled to a sale fee of not exceeding fifty cents per parcel of land for making tax sales.

BANKS AND BANKING: FEDERAL DEPOSIT INSURANCE; PUBLIC FUNDS

6 January, 1944.

Where a county has funds in a bank under several accounts the aggregate amount of such accounts is protected only to the extent of \$5,000 under the Federal Deposit Insurance Law.

CLERK OF THE SUPERIOR COURT; FEE FOR AUDITING FINAL ACCOUNT OF
EXECUTORS AND ADMINISTRATORS; G. S. § 2-34
(MICHIE'S CODE § 3904(h))

28 January, 1944.

In G. S. § 2-34 (Michie's Code § 394(h)), providing for fees to be allowed clerks of superior court for auditing final accounts of executors and administrators, the words "total receipts and disbursements" mean the entire receipts and disbursements from the time of the qualification of the executor or administrator to the termination of his duties, and would not be confined to that portion of the estate not paid to legatees or distributees.

COUNTIES: NECESSARY EXPENSE; SALARY, COUNTY FARM AGENT, ETC.

7 January, 1944.

If a Board of County Commissioners should find that it is necessary to employ additional persons in the office of the county farm agent to enable him to successfully carry out the duties of his office, the expenditure occasioned thereby would be a "necessary expense" for which the county would be authorized to levy a tax.

DOGS: PAYMENT OF DAMAGES FOR INJURY TO PROPERTY

8 January, 1944.

Under a statute requiring county commissioners, upon proper proof, to order payment (out of moneys arising from the tax on dogs) of damages arising out of injury or destruction of property by any dog, the fact that personal property taxes had not been paid on the property alleged to have been destroyed would not destroy the owner's right to damages. The question as to what constitutes satisfactory proof of ownership and injury to the property is to be decided by the board of commissioners.

DOUBLE OFFICE HOLDING: MEMBER, COUNTY BOARD OF EDUCATION;
DELINQUENT TAX COLLECTOR; SECTION 2, c. 645, 1943 SESSION LAWS

11 January, 1944.

Membership of the county board of education and the office of delinquent tax collector are both public offices within the constitutional prohibition against double office.

GAME LAWS: JURISDICTION; VIOLATION OF SECTION 2, c. 231, P. L. 1941

7 January, 1944.

A justice of the peace does not have jurisdiction of the criminal offense of killing a female deer, since the punishment provided for such offense exceeds a fine of fifty dollars or imprisonment for thirty days. Where a defendant has been tried and convicted of such an offense before a justice of the peace, a new warrant should be issued and upon a hearing of the case the defendant should be bound over to the court in the county having jurisdiction, if possible cause be found.

INSANE PERSONS AND INCOMPETENTS: PERSON INSANE AT TIME OF
MOVING INTO THIS STATE

5 January, 1944.

Under the provisions of C. S. 6187, an insane person who moves into this State may not be deemed a resident for the purpose of being admitted to a State hospital.

INTOXICATING LIQUOR: POSSESSION OF NON-TAX-PAID LIQUOR IN
COUNTIES WHICH HAVE ADOPTED A. B. C. ACTS

13 January, 1944.

Possession of any amount of non-tax-paid intoxicating liquor is illegal in counties which have adopted the provisions of the Alcoholic Beverage Control Act of 1937, as well as in all other counties.

LABOR MOBILIZATION: EMERGENCY WAR POWERS PROCLAMATION No. IV

7 January, 1944.

A person who has a regular 40 hour per week job, but who works on such job less than an average of 35 hours per week, may be proceeded against under the provisions of Emergency War Powers Proclamation No. IV, unless such failure to work the minimum of 35 hours per week is excused by the provisions of said Proclamation.

MUNICIPAL CORPORATIONS: HOSPITALS; CONTRIBUTION TO CONSTRUCT

22 January, 1944.

A municipal corporation has no authority to make a contribution from earnings of its public utilities toward the construction of a hospital which is not to be owned and operated by the municipality.

MUNICIPALITIES: AUTHORITY TO CONTRIBUTE FUNDS TO RATIONING
BOARDS

6 January, 1944.

Under authority of Session Laws of 1943, c. 711, the Board of Commissioners of a town may waive payment for electric current furnished to a local rationing board office. The Act does not apply to certain named counties.

PUBLIC OFFICERS: COMPROMISE OF CLAIM OR DEBT DUE TO
MUNICIPALITY BY REASON OF EMBEZZLEMENT
BY PUBLIC OFFICIAL

3 January, 1944.

A municipality has the power to compromise a civil claim due it by treasurer on account of shortage of moneys, but should not do so unless it is impossible to collect the full amount from the official or on his bond. The criminal liability of the official cannot be compromised.

SCHOOLS: MENTALLY DEFECTIVE PUPILS; DISMISSAL

26 January, 1944.

If a principal and teacher are of the opinion that a child attending public school is feeble minded to such an extent as to make it impossible for such child to profit by the instruction given in the school, the procedure outlined in G. S. 115-303 (C. S. 5758) relating to dismissal of feeble minded children from school, should be followed.

TANGIBLE PERSONAL PROPERTY TAXES: IMPORTED SUGAR STORED IN ORIGINAL PACKAGES IN WAREHOUSES WITHIN THE STATE

17 January, 1944.

Sugar which is bagged in Cuba, shipped to this country, and stored in a warehouse in this State, in the original package, is not subject to local personal property taxation against the importer.

WIDOWS: DOWER; SALE OF REAL PROPERTY FOR ASSETS TO PAY DEBTS; DETERMINATION OF INTEREST OF WIDOW

11 January, 1944.

Upon sale of real property to make assets to pay debts of an intestate, the widow's dower interest should be computed on the basis of the amount actually realized from such sale, even though the amount realized is in excess of the fair market value of the property at the time of the intestate's death. The commuted value of her dower should be based upon her age at the time of the sale, rather than upon her age at the time of her husband's death.

CRIMINAL LAW: TATTOOING

10 February, 1944.

It is a violation of the criminal laws of the State for any person to tattoo the arm, leg, etc., of any other person under twenty-one years of age.

DISCHARGES FROM MILITARY SERVICE: PLACE OF REGISTERING

18 February, 1944.

A person who has been discharged from military service is entitled to have his discharge registered in any county he sees fit regardless of whether he is a resident of that county.

DIVORCE: NINE YEARS SEPARATION; AUTOMATIC DIVORCE NOT OBTAINED

1 February, 1944.

Nine years separation does not automatically divorce a couple. No period of separation automatically divorces a couple. An action for divorce must be instituted and a judgment of divorce procured.

DOUBLE OFFICE HOLDING: CHIEF OF POLICE; TOWNSHIP CONSTABLE

18 February, 1944.

One person may not hold the office of chief of police and at the same time act as township constable, as both positions are offices within the double office holding provision of the North Carolina Constitution.

DOUBLE OFFICE HOLDING: POSTMASTER; NOTARY PUBLIC

1 February, 1944.

One person may not hold the office of Notary Public and that of U. S. Postmaster. Any person who holds the office of Notary Public and later accepts the appointment as U. S. Postmaster *co instante* vacates the first by reason of the prohibition against double office holding in the North Carolina Constitution.

MINORS: EMANCIPATION

3 February, 1944.

A minor may be either expressly or impliedly emancipated under North Carolina law. He is expressly emancipated by agreement with his parents, and impliedly emancipated when the parent by his acts impliedly consents that the child may have his own time and control of his earnings.

REGISTER OF DEEDS: FEE FOR RECORDING MILITARY DISCHARGES

18 February, 1944.

A register of deeds is not authorized to collect any fee for recording a discharge of a former member of the U. S. military forces.

TAXATION: INHERITANCE TAXES; DEDUCTIONS; WIDOW'S YEAR'S ALLOWANCE

3 February, 1944.

The allowance made to a widow as her year's allowance is not deductible from the gross estate of a decedent for inheritance tax purposes.

TRADE MARKS: TITLE OF BOOKS; REGISTRATION

17 February, 1944.

The North Carolina statute on trade marks does not contemplate the registration of the title of a publication as a trade mark.

WAR BONDS: GIFTS

15 February, 1944.

A valid gift cannot be made of a war bond by merely transferring its possession from one person to another without changing its registration with the Treasury Department.

CORONERS: FEES

11 March, 1944.

The general law provides that coroners shall receive \$5.00 for holding an inquest over a dead body and, if necessarily engaged for more than one day in the inquest, \$5.00 for each additional day. For burying a pauper over whom an inquest has been held, the coroner is to receive all necessary and actual expenses, to be approved by the board of county commissioners and paid by the county. No provision for mileage is made.

COSTS: TAXES; APPLICATION OF COSTS TO TAXES DUE COUNTY

4 March, 1944.

When a county is required to pay a bill of costs in a criminal action, the amount of such costs due an individual should be credited on the taxes due by that individual to the county, if any taxes are due to the county by that individual.

COUNTIES: EXPENDITURES FOR SERVICE OFFICER

9 March, 1944.

There is no statute authorizing a county to make appropriations and levy taxes for the purpose of employing service officers to look after the interest of discharged service men.

DEEDS: TRUSTEES; JOINDER OF WIFE

14 March, 1944.

A deed of a trustee who has received the property in his representative capacity is valid without the joinder of the trustee's wife. If, however, the deed to the trustee does not contain language sufficient to show that he is to take in his representative capacity, his (the trustee's) deed must be joined in by this wife in order to convey a valid title.

DOUBLE OFFICE HOLDING: CHAIRMAN COUNTY BOARD OF ELECTION;
COUNTY TAX SUPERVISOR

21 February, 1944.

One person cannot hold the position of chairman of the county board of elections and the position of county tax supervisor. The N. C. Constitution prohibits double office holding.

ELECTIONS: LEAVES OF ABSENCE; RIGHT OF MILITARY PERSONNEL
TO RUN FOR OFFICE

14 March, 1944.

A register of deeds who has procured a leave of absence and is serving in the armed forces may be re-nominated and re-elected to office. However, he may be unable to qualify for the office if elected.

ELECTIONS: STATE SENATE; TIME OF FILING

15 March, 1944.

Every candidate for selection as the nominee of any political party for the office of State Senator in a primary election shall file with and place in the possession of the county board of elections of the county in which he resides, by six o'clock p.m. on or before the sixth Saturday before such primary is to be held, a notice and pledge.

EXECUTORS AND ADMINISTRATORS: FEES

18 March, 1944.

Executors and administrators are not entitled to commissions on distribution made to distributees or beneficiaries of the decedent.

INDUSTRIAL BANKS: TRUST BUSINESS

18 March, 1944.

Industrial banks do not have authority to engage in a trust business; therefore, they have no right to accept war bonds from individuals for safekeeping and charge a fee therefor.

MUNICIPALITIES: GOVERNMENTAL FUNCTIONS; ABATTOIRS

31 March, 1944.

In the construction and maintenance of an abattoir a municipality is performing a governmental function.

DOUBLE OFFICE HOLDING: STEWARD OF COUNTY HOME; CONSTABLE

30 March, 1944.

The position of steward of the county home is not an office within the meaning of Article XIV, Sec. 7, of the State Constitution; therefore, it may be held by a constable.

ELECTIONS: CANDIDATES REQUIRED TO FILE WITH BOARD OF
ELECTIONS OF RESIDENCE

17 March, 1944.

A person who desires to become a candidate for a county office in a partisan primary must file with the county board of elections of the county in which he resides. A person who desires to become a candidate for constable in a partisan primary should file from the township in which he resides.

LAW ENFORCEMENT OFFICERS' BENEFIT AND RETIREMENT FUND

6 March, 1944.

Where contributions have been made to the Law Enforcement Officers' Benefit and Retirement Fund by a policeman, and he resigns and leaves these contributions in the fund, he may, upon reemployment as a police officer, resume contributions to the Fund and receive credit for those contributed during his former employment.

LEAVES OF ABSENCE: REGISTER OF DEEDS

14 March, 1944.

A register of deeds who plans to enter the military service of the United States may apply to the board of county commissioners of his county for a leave of absence. If the register of deeds does not so apply for and obtain a leave of absence, he cannot appoint a deputy who will be entitled to the full salary of the register unless the board of commissioners appoints the deputy acting register of deeds.

MARRIAGE: CELEBRATING MARRIAGE IN ONE COUNTY ON LICENSE
ISSUED IN ANOTHER

15 March, 1944.

A marriage performed in one county on a marriage license issued in another county is a valid marriage, but the person who performs the marriage is guilty of a violation of the criminal laws of the State.

SCHOOLS: SCHOOL COMMITTEES; TERM OF OFFICE; TERMINATION OF
TERM BY BOARD OF EDUCATION

14 March, 1944.

The statute fixes a definite term of office for the members of a school committee, and the county board of education is not authorized to terminate their terms of office prior to the expiration thereof as fixed by statute.

TAXATION: INCOME TAXES; DEDUCTIONS; CONTRIBUTIONS TO BOYS' CLUBS

6 March, 1944.

Contributions made to charitable organizations such as boys' clubs are deductible from gross income for income tax purposes if they do not amount to more than five per cent of the net income of a corporation or ten per cent of the net income of an individual.

TAXATION: INCOME TAXES; SERVICE PAY

2 March, 1944.

Income received during 1942 and subsequent years from the United States for services as a member of the armed forces, including members of the Women's Auxiliary organizations, is not taxable in North Carolina.

TAXATION: INCOME TAXES; NONRESIDENTS EARNING MONEY IN
NORTH CAROLINA

17 March, 1944.

Nonresidents who earn money in North Carolina must pay income taxes on such earnings (above exemptions) to North Carolina. This rule is not altered by the fact that checks in payment of the services performed by such nonresidents are issued in another state.

TAXATION: SECOND-HAND CLOTHES AND SHOES

13 March, 1944.

There is no special State license tax imposed upon the business of selling second-hand clothes and shoes; however, the person who desires to engage in such business must procure a \$1.00 license and pay a tax of 3 per cent of the total gross sales of said business.

AD VALOREM TAXES: BANKS NOT REQUIRED TO FURNISH LIST OF
DEPOSITORS TO TAX COLLECTOR

4 April, 1944.

There is no law which authorizes a tax collector to require banks to give him a list of its depositors. A bank is not obligated to give the tax collector any information concerning deposits of any person unless legal proceedings are brought for the attachment of such deposits.

AGRICULTURE: ANIMAL DISEASES; PUBLIC LIVESTOCK MARKETS;
FARMERS SELLING OWN ANIMALS

14 April, 1944.

Animals which are raised and owned by a bona fide farmer who is a resident of North Carolina, and which are sold by him outside the public livestock markets, are not subject to the provisions of the Public Livestock Market Act regarding testing, vaccination, etc.

COURT COSTS: COST WHEN SEVERAL CASES CONSOLIDATED FOR TRIAL;
LAW ENFORCEMENT OFFICERS BENEFIT AND RETIREMENT FUND

3 April, 1944.

Where separate warrants are issued for each of several defendants charging them with crimes arising out of the same transaction and the cases are consolidated for trial, the court in its discretion may, upon conviction of the defendants, require each of the defendants to pay the full bill of costs, or he may require the payment of only one bill of costs, to be divided among the various defendants. However, the \$2.00 fee provided for the use and benefit of the Law Enforcement Officers' Benefit and Retirement Fund must be assessed against each defendant.

CRIMINAL LAW: MOTOR VEHICLES; OPERATION WHILE INTOXICATED;
REVOCATION OF DRIVER'S LICENSE

12 April, 1944.

A Superior Court has no authority to revoke the driver's license of a person convicted of drunken driving. It may, however, suspend sentence upon condition that the defendant not operate a motor vehicle on the public highways of the State for a definite and reasonable period of time. The Department of Motor Vehicles is required by G. S. 20-17 to revoke the license of a person convicted of drunken driving, and G. S. 20-24 provides that the court before which such person is convicted shall take up the defendant's license and forward it to the Department.

DOUBLE OFFICE HOLDING: A. B. C. ENFORCEMENT OFFICER; CONSTABLE;
RIGHT TO FILE IN PRIMARY

11 April, 1944.

One person may not hold the offices of A. B. C. enforcement officer and township constable at the same time. Although an A. B. C. enforcement officer is qualified to run for the office of township constable, he will vacate his position as A. B. C. enforcement officer if he is elected and qualifies as constable.

DOUBLE OFFICE HOLDING: NOTARY PUBLIC-CLERK UNDER CIVIL SERVICE

12 April, 1944.

A United States postal clerk may hold the office of notary public without infringing upon the provisions of the North Carolina Constitution in regard to double office holding.

ELECTIONS: INDEPENDENT CANDIDATE IN PRIMARY

11 April, 1944.

There is no law providing for participation of an independent candidate in a Democratic primary. In order for an independent candidate's name to be placed on the general election ballot, he must file a written petition signed by at least twenty-five per cent of those entitled to vote for candidates for the office to which he aspires, along with an affidavit that he seeks to become an independent candidate and that he does not affiliate with any particular party.

INDIANS: RIGHT TO VOTE

13 April, 1944.

Cherokee Indians who reside in North Carolina are citizens of the State, and are entitled to vote if otherwise qualified.

INHERITANCE TAXATION: NONRESIDENT OWNING PROPERTY IN THIS
STATE AT TIME OF DEATH; LIABILITY OF ESTATE

7 April, 1944.

The estate of a decedent who, at the time of his death owned property having a taxable situs in this State, is liable for inheritance taxes on the property, although the decedent was a nonresident at the time of his death.

INHERITANCE TAXATION: NOTICE AND CONSENT REQUIRED FOR PAYMENT OF
CONTRACTS AND ANNUITIES OTHER THAN LIFE INSURANCE

5 April, 1944.

Under Section 21½ of the Revenue Act of 1939, as amended, it is necessary for life insurance companies to give notice to the Commissioner of Revenue before paying the proceeds of annuities and other contracts which are not policies of insurance upon the life of the decedent.

SCHOOLS: CITY ADMINISTRATIVE UNITS; PURCHASE OF
EQUIPMENT AND SUPPLIES

7 April, 1944.

The governing bodies of city administrative units, as well as the county boards of education, are subject to the provisions of Section 23 of the School Machinery Act, requiring purchase of all school supplies, equipment and materials "in accordance with contracts and/or with the approval of the State Division of Purchase and Contract."

SCHOOLS: PAYMENT OF TUITION BY NONRESIDENT CHILDREN ATTENDING
SCHOOL IN SPECIAL TAX DISTRICT

3 April, 1944.

Children who attend school in a district in which a special school tax is levied, but who reside outside the boundaries of such district, may be required to pay a tuition charge which would reasonably defray the extra per capita cost which is provided for by the special tax, unless such children have been transferred to attend school in the special tax district by order of the State Board of Education.

COSTS: SOLICITOR'S FEES

1 April, 1944.

Where a bill of indictment charges a defendant with a felony, but the defendant is allowed to plead guilty to a misdemeanor, the solicitor's fee charged should be that for a misdemeanor.

AGRICULTURE: ANIMAL DISEASES; BANG'S DISEASE; COMPULSORY TESTING

18 April, 1944.

Where a board of county commissioners has taken the proper steps toward authorizing cooperation with the State and Federal governments in the Bang's disease eradication program, the testing of all cattle in the county becomes compulsory under the provisions of G. S. 106-395.

CHILD WELFARE: JUVENILE COURTS; DISPOSITION OF CHILD; PROBATION

30 April, 1944.

A juvenile court judge may place a child on probation subject to the condition that he make restitution or reparation to a party for actual damages or losses sustained through the child's illegal conduct.

COUNTIES: RIGHT TO EMPLOY CLERICAL ASSISTANCE FOR MEMBER OF
STATE HIGHWAY PATROL

30 April, 1944.

A county has no authority to appropriate funds to employ clerical assistance for a member of the State Highway Patrol.

DOUBLE OFFICE HOLDING: FARM SUPERINTENDENT, JACKSON TRAINING
SCHOOL CHAIRMAN; DEMOCRATIC EXECUTIVE COMMITTEE

13 April, 1944.

The farm superintendent of a State training school may serve as chairman of the county democratic executive committee without violating the constitutional prohibition against double office holding.

DOUBLE OFFICE HOLDING: MEMBER OF DRAFT BOARD;
HOUSE OF REPRESENTATIVES

28 April, 1944.

A member of a county draft board is eligible as a candidate for the House of Representatives in the Democratic Primary. Being a member of the draft board would not disqualify him from holding public office.

INSURANCE: RATES; DISCRIMINATION

27 April, 1944.

An agent writing hail insurance may not in lieu of cash, require interest bearing notes of some persons and non-interest bearing notes from others for the same type of insurance. This would constitute an unlawful discrimination as to rates.

INTEREST: MAXIMUM RATE; BONDS

14 April, 1944.

The maximum legal rate of interest in North Carolina being six per cent, the issuance of bonds carrying an interest rate of seven per cent would be in conflict with the laws regarding usury.

INTOXICATING BEVERAGES: TRANSPORTATION INTO NORTH CAROLINA;
LIMITED TO ONE GALLON

17 April, 1944.

The amount of intoxicating liquors which a person may bring into North Carolina from outside the State is limited to one gallon, which must be for his own personal use.

MARRIAGE LAWS: REGISTER OF DEEDS; CHANGING NAME ON RECORDS;
MARRIAGE LICENSE

17 April, 1944.

A Register of Deeds has no authority to alter marriage licenses or certificates upon the request of an interested party, even though it appears that such certificate is in error as to the age or name of one of the parties.

MUNICIPAL CORPORATIONS: PRIVILEGE TAXES; FORTUNE TELLERS;
REVENUE ACT, SECTION 124

18 April, 1944.

Every person engaging in the business of telling or pretending to tell fortunes must pay a license tax for the privilege of engaging in such

business; and where two or more persons are engaged in such business at one location a separate license is required for each, even though they may be members of a firm or partnership.

MUNICIPALITIES: EMPLOYMENT OF COUNSEL TO DEFEND OFFICER CHARGED WITH CRIME IN CONNECTION WITH PERFORMANCE OF OFFICIAL DUTIES

18 April, 1944.

The governing body of a municipality is authorized to employ counsel to defend one of its police officers who is charged with a crime alleged to have been committed by him in connection with the performance of his official duties. Before doing so, however, the governing body should satisfy itself that the officer should be acquitted of the crime with which he is charged.

SALES AND USE TAXES: SALES OF REPOSSESSED AUTOMOBILES BY FINANCE COMPANY

7 April, 1944.

Where a finance company repossesses and resells an automobile by virtue of a chattel mortgage or conditional sales contract transferred to it by the vendor, it is liable for sales tax upon the resale of the automobile. Section 406(h) of the Revenue Act exempts only sales of repossessed property by the vendor.

AIRPORTS: JOINTLY OPERATED AIRPORTS; COUNTIES; MUNICIPAL CORPORATIONS

20 April, 1944.

Chapter 63 of the General Statutes contains authority for the establishment by municipalities of jointly operated airports. No special enabling act is required.

CLERKS OF COURT: INDEX RECORDS FOR PARTNERSHIPS

20 April, 1944.

The law requires no particular system of indexing to be used by a clerk of court in setting up index records of partnership. Any efficient and known system will suffice.

CRIMINAL LAW: SENTENCE; COMMENCEMENT OF; STATE PRISON

26 April, 1944.

When prisoners are sentenced to the Central Prison, the time for which the prisoner is sentenced should be counted from the day he actually begins to serve his sentence.

DOUBLE OFFICE HOLDING: COUNTY AND CITY ATTORNEYS

25 April, 1944.

County and city attorneys, being employees rather than public officers, may hold a public office without infringing upon the constitutional prohibition against double office holding.

JUSTICES OF THE PEACE: REMOVAL OF CASES

21 April, 1944.

A case pending before a justice of the peace may, on the motion of either party, be removed to the jurisdiction of another justice; but a case may not be more than once removed.

MARRIAGE LAWS: FEES FOR ISSUING MARRIAGE LICENSE

19 April, 1944.

In the absence of a public-local act to the contrary, a register of deeds may not charge as his fee more than one dollar for the issuance of a marriage license, even though the license be issued after office hours.

MUNICIPALITIES: WATER WORKS SYSTEM; LEVY OF TAX IN
ANTICIPATION OF FUTURE CONSTRUCTION

19 April, 1944.

A town may not now levy a special tax for the purpose of raising funds to apply upon the cost of future construction of a water works system to be built when materials become available.

SCHOOLS: TEACHERS; DISMISSAL

26 April, 1944.

Principals or local school authorities have no authority to impose fines or other penalties on teachers who are habitually tardy in beginning school work. The only remedy in such case would be suspension or dismissal under the procedure outlined in G. S. 115-117 and 115-143.

STATE MILITIA: SEX OF MEMBERS

27 April, 1944.

Females may not enlist in the North Carolina State Guard.

TAXATION: USE TAX

22 April, 1944.

Sales of tangible personal property made by Seller outside of the State to manufacture in State are exempt from use tax, if said property enters into or becomes an ingredient or component part of the manufactured product.

OFFICERS: MEMBER OF ARMY; CANDIDATE FOR LEGISLATURE

3 April, 1944.

A person who is a member of the U. S. armed forces could become a candidate for the North Carolina Legislature, so far as the State law is concerned. It may, however, be impossible for such candidate, if elected, to be present and qualify as a member of the Legislature. The General Assembly is the exclusive judge of the qualifications of its members.

BEER: REFUSAL TO ISSUE LICENSE

5 May, 1944.

The governing body of a municipal corporation may refuse to issue a new license for the sale of beer if, after notice and a hearing, it appears that the applicant has operated his place in such a way as would have justified revocation of his license.

CLERK SUPERIOR COURT: VACANCIES

5 May, 1944.

When the office of clerk of the superior court becomes vacant because of the death of the incumbent, the person appointed to the office holds until the next election for members of the General Assembly.

CONSTITUTION: DEBT LIMITATION

2 May, 1944.

When a school building is completely destroyed by fire, the county commissioners have no authority to borrow money, without a vote of the people, in excess of two-thirds of the amount by which the outstanding indebtedness of the county was reduced during the preceding fiscal year, for the purpose of replacing the destroyed school building.

COUNTIES: APPROPRIATIONS TO CIVILIAN DEFENSE ORGANIZATIONS AND STATE GUARD UNITS

5 May, 1944.

Under Chapter 711 of the Session Laws of 1943, counties are authorized to make an appropriation from the general fund to local organizations of official state and federal governmental agencies engaged in the war effort. No appropriation shall be made by way of compensation to members of the boards of such agencies or any panels thereof. Counties may also make appropriations to State Guard units.

GAMBLING: SLOT MACHINES

1 May, 1944.

A machine which is operated on the coin-in-the-slot principle and which is used for amusement only cannot be legally operated in North Carolina if the operator has a chance to make varying scores or tallies upon the outcome of which wagers may be made.

JUDGMENTS: STATUTE OF LIMITATIONS; HOMESTEAD

1 May, 1944.

Where a judgment debtor has had his homestead allotted, the running of the statute of limitations against all docketed judgments which are not already barred by statute is suspended as to all property embraced in the homestead.

MUNICIPALITIES: ORDINANCES; REGULATION OF TAXICABS

8 May, 1944.

In the absence of special legislative authority, municipalities are limited in regulating businesses such as taxicabs to those operated within the corporate limits of the municipality. Thus, a municipality may not regulate taxicabs operating within a distance of five miles of the corporate limits.

PUBLIC LIBRARIES: ELECTIONS; SOCIAL REGISTRATION

5 May, 1944.

No provision is made for a special registration for an election to be held on the question of whether a county shall appropriate money for the establishment of a public library.

REGISTER OF DEEDS: LEAVE OF ABSENCE; BOND

8 May, 1944.

If the county commissioners grant a leave of absence to a register of deeds to enter the military service and the register of deeds continues to act through his deputy, the granting of a leave of absence would not discharge the official bond given by the register of deeds.

SALES TAX: SALES OF IRONING BOARDS MANUFACTURED BY VENDOR

2 May, 1944.

Where an individual manufactures ironing boards which he sells to stores for the purpose of resale and to consumers at retail, he is not liable for sales tax on the boards sold to the furniture stores for the purpose of resale but is liable for the tax on the boards sold to consumers at retail.

**BUREAU OF INVESTIGATION
NORTH CAROLINA DEPARTMENT OF JUSTICE
RALEIGH**

HONORABLE HARRY McMULLAN
Attorney General
DEPARTMENT OF JUSTICE
Raleigh, North Carolina

MY DEAR MR. McMULLAN:

I have the honor to submit herewith report covering the activities of the Bureau of Investigation for the biennium July 1, 1942 to July 1, 1944.

Respectfully yours,
THOS. CREEKMORE,
Director.

TO THE DIRECTOR, BUREAU OF INVESTIGATION,
DEPARTMENT OF JUSTICE,
WASHINGTON, D. C.

FROM THE ATTORNEY GENERAL,
WASHINGTON, D. C.

SUBJECT: [Illegible]

RE: [Illegible]

DATE: [Illegible]

TO THE DIRECTOR, BUREAU OF INVESTIGATION,
DEPARTMENT OF JUSTICE,
WASHINGTON, D. C.

FROM THE ATTORNEY GENERAL,
WASHINGTON, D. C.

SUBJECT: [Illegible]

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92. [Illegible]

93. [Illegible]

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98. [Illegible]

99. [Illegible]

100. [Illegible]

REPORT OF THE DIRECTOR OF THE BUREAU OF INVESTIGATION TO THE ATTORNEY GENERAL FOR THE BIENNIIUM JULY 1, 1942 TO JULY 1, 1944

The State Bureau of Investigation was established on July 1, 1939. This report covers the fourth and fifth years of its activities.

Since July 1, 1940, there has been no change in the number of persons engaged on our staff. During this period, our facilities and resources have been consistantly serving and assisting the various administrative and law enforcement agencies of the State.

The personnel of the Bureau includes a number of persons of training and skill in the investigation of crime and in the preparation of evidence so as to be of service to local law enforcement officers and the courts in criminal matters of major importance.

Our facilities for firearms identification have been somewhat interrupted due to the present emergency, since our ballistics expert is now on a leave of absence in the service of the United States Army. Not having a qualified expert, we are only attempting to assist in making preliminary examinations where firearms are involved.

We are prepared and are assisting the law enforcement officers in their problems involving questioned documents. Such examinations include comparison of handwriting, typewriting and printing, erasures and alterations, obliterations, secret writings, comparison of papers, inks, and writing instruments.

Requests requiring chemical analyses are conducted by Dr. Haywood M. Taylor, Pathologist and Toxicologist for the Bureau. This service includes the examination of blood, vital human organs, liquids, and foods; as well as other materials. Such examinations are valuable in cases of poison, rape, murder, hit-and-run driving, and other crimes.

Our fingerprint experts have a thorough knowledge of the various methods of obtaining latent fingerprints and are prepared to do this work in the field at the scene of the crime. Latent fingerprints thus obtained or delivered to the Bureau by the officers are compared with those of any suspects. Such fingerprint records are available for immediate or future comparison.

Photography in criminal investigations is now recognized as indispensable. Photographs made at the scene of the crime before time has permitted physical changes are always dependable in our investigations and contribute materially in explaining and illustrating evidence in court many months later.

For the past eighteen months, we have prepared and issued a bulletin which is sent to more than five hundred law enforcement officers throughout North Carolina and adjoining states. The *Bulletin* carries items of interest to the officers; such as, wanted persons, escaped convicts, and descriptions of stolen property.

All assistance and service rendered by the State Bureau of Investigation is without cost to the law enforcement agencies throughout the State, since provision is made by the legislature for this purpose.

Due to the vast number of men and women directly or indirectly participating in the present war effort, the problems of post-war reconstruction will be an involved and intricate responsibility on the part of society generally, and especially the law enforcement officers. Diligent study is being made so that we will be prepared and equipped to cope with tomorrow's criminal problems.

On behalf of the Staff, may we express our appreciation for the splendid coöperation rendered by the administrative officers, judges, solicitors, law enforcement officers, and law abiding citizens of the State.

The following classification of crime has been adopted by the Bureau and all cases received and investigated have been assigned thereunder:

CRIME CLASSIFICATION

- A. Assault.....
 - 1. Simple
 - 2. A.D.W. with Intent to Kill
 - 3. Assault with Intent to Commit Rape
 - 4. All others
 - 5. Hit and run
- B. Burglary-Breaking
and Entering.....
 - 1. First Degree (occupied)
 - 2. Second Degree (unoccupied-safecracking)
- E. Embezzlement-
Fraud.....
 - 1. Embezzlement
 - 2. Forgery
 - 3. Worthless Checks
 - 4. Extortion
 - 5. All Others
- H. Homicide.....
 - 1. First Degree Murder
 - 2. Second Degree Murder
 - 3. Manslaughter
 - 4. Suspicious Death
- L. Larceny.....
 - 1. Auto
 - 2. All Others
- R. Robbery.....
 - (person)
- S. Sex Offenses.....
 - 1. Rape
 - 2. Abortion
 - 3. Adultery and Fornication
 - 4. Bastardy
 - 5. Bigamy
 - 6. Buggery
 - 7. Incest
 - 8. Prostitution
 - 9. Seduction
 - 10. All Others

M. Miscellaneous.....	1. Arson
	2. Bribery
	3. Buying or Receiving Stolen Property
	4. Conspiracy
	5. Perjury
	6. Possession Burglar Tools
	7. Trespass
	8. Unlawful Use or Possession Explosives
	9. Weapons
	10. Abandonment and Non-support
	11. Escape
	12. Abduction
	13. Poisoning
	14. Resisting Arrest
	15. Riot
	16. Anonymous Letters
	17. Pure Food and Drug Laws
	18. Prohibition Laws
	19. Motor Vehicle Laws
	20. Gambling and Lottery
	21. Parole Violation
	22. Probation Violation
	23. Election Laws
	24. All Others

The following statement shows new, old, and miscellaneous cases investigated and closed for each month during the period from July 1, 1942 to July 1, 1943:

	NEW CASES		OLD CASES		MISCELLANEOUS CASES
	Investigated	Closed	Investigated	Closed	Investigated and Closed
July	28	11	12	4	18
August	16	10	10	5	17
September	25	8	14	7	28
October	31	13	11	6	24
November	22	8	10	2	17
December	17	10	8	3	18
January	19	7	10	3	24
February	16	5	11	5	18
March	29	15	8	3	28
April	23	13	12	5	10
May	41	20	7	4	22
June	20	13	9	1	21
Totals	287	133	122	48	245

The following statement shows new, old, and miscellaneous cases investigated and closed for each month during the period from July 1, 1943 to July 1, 1944:

	NEW CASES		OLD CASES		MISCELLANEOUS CASES
	Investigated	Closed	Investigated	Closed	Investigated and Closed
July	28	6	6	1	19
August	27	6	11	1	16
September	35	10	8	2	12
October	29	16	9	3	15
November	23	15	15	8	20
December	32	22	6	4	11
January	25	12	10	5	20
February	21	9	14	5	13
March	26	12	18	5	14
April	30	15	15	7	5
May	27	15	18	2	14
June	22	12	10	3	10
Totals	325	150	140	46	169

July 1, 1942 to July 1, 1943

The following statement shows the number of requests received by counties and the classification of the types of crime investigated therein:

Counties	Assault	Burglary	Embezzlement	Homicide	Larceny	Robbery	Sex Offenses	Misc.	Totals
Alamance.....		6	3		1	1		2	13
Alexander.....		1						1	2
Alleghany.....									0
Anson.....		2							2
Ashe.....									0
Avery.....									0
Beaufort.....		1						1	2
Bertie.....		5		1		1			7
Bladen.....		1		1				1	3
Brunswick.....				1					1
Buncombe.....			1						1
Burke.....	3	1		1				2	7
Cabarrus.....		1							1
Caldwell.....			1						1
Camden.....	1							1	2
Carteret.....									0
Caswell.....									0
Catawba.....		3		1					4
Chatham.....									0
Cherokee.....									0
Chowan.....				1					1
Clay.....									0
Cleveland.....									0
Columbus.....									0
Craven.....		1						1	2
Cumberland.....	1			2					3
Currituck.....		1							1
Dare.....									0
Davidson.....		6		1					7
Davie.....	1							1	2
Duplin.....		3		1					4
Durham.....			1					1	2
Edgecombe.....	1	1							2
Forsyth.....									0
Franklin.....		1		1					2
Gaston.....	1			1					2
Gates.....				1					1
Graham.....						1			1
Granville.....		1						1	2
Greene.....								2	2
Guilford.....			2	3		1		2	8
Halifax.....		8	2						10
Harnett.....	1	5			3	1		1	11
Haywood.....									0
Henderson.....				2					2
Hertford.....		3				1			4
Hoke.....									0
Hyde.....									0
Iredell.....		1				1		1	3
Jackson.....									0
Johnston.....		2	1	2			1		6
Jones.....									0
Lee.....		1		1					2
Lenoir.....			1					1	2

[illegible]

July 1, 1942 to July 1, 1943

The following statement shows the number of requests received by counties and from what sources requests were made:

Counties	Sheriffs' Depts.	Police Depts.	High-way Patrol	Solicitors	Judges	Exec. Depts.	Coro-ners	Misc.	Totals
Alamance	8	4							12
Alexander		3							3
Alleghany									0
Anson	2								2
Ashe									0
Avery									0
Beaufort		1					1		2
Bertie	4	1	1	1					7
Bladen	3								3
Brunswick				1					1
Buncombe						1			1
Burke	4	1				2			7
Cabarrus		1							1
Caldwell	1								1
Camden				2					2
Carteret									0
Caswell									0
Catawba	4								4
Chatham									0
Cherokee									0
Chowan	1								1
Clay									0
Cleveland									0
Columbus									0
Craven						1		1	2
Cumberland	1							2	3
Currituck				1					1
Dare									0
Davidson		6						1	7
Davie				2					2
Duplin		1	1			1			3
Durham		3							3
Edgecombe		1	1						2
Forsyth									0
Franklin	2								2
Gaston	2								2
Gates			1						1
Graham	1								1
Granville	1							1	2
Greene	2								2
Guilford	2	3					2	1	8
Halifax	3	5		1				1	10
Harnett	3	7						1	11
Haywood									0
Henderson	2								2
Hertford	1		3						4
Hoke									0
Hyde									0
Iredell	1	1		1					3
Jackson									0
Johnston	2	2		1		1			6
Jones									0
Lee		2							2
Lenoir		1				1			2

July 1, 1943 to July 1, 1944

The following statement shows the number of requests received by counties and the classification of the type of crime investigated therein:

Counties	Assault	Burglary	Embezzle- ment	Homicide	Larceny	Robbery	Sex Offenses	Misc.	Totals
Alamance.....		7	1	1				2	11
Alexander.....									0
Alleghany.....					1				1
Anson.....		1						1	2
Ashe.....		4			2				6
Avery.....									0
Beaufort.....	1	4						1	6
Bertie.....		5				1		1	7
Bladen.....		1		3					4
Brunswick.....						1		1	2
Buncombe.....							1	3	4
Burke.....								1	1
Cabarrus.....									0
Caldwell.....		1							1
Camden.....									0
Carteret.....									0
Caswell.....	1								1
Catawba.....		1		1				1	3
Chatham.....									0
Cherokee.....		1		1					2
Chowan.....		2							2
Clay.....									0
Cleveland.....			1						1
Columbus.....		1		2				1	4
Craven.....		1					1	1	3
Cumberland.....		1		2					3
Currituck.....									0
Dare.....									0
Davidson.....	1	4	1		2			1	9
Davie.....									0
Duplin.....		8							8
Durham.....				1					1
Edgecombe.....		1							1
Forsyth.....									0
Franklin.....	3	6		1		2			12
Gaston.....		2							2
Gates.....									0
Graham.....								1	1
Granville.....	2	1		2		1		2	8
Greene.....									0
Guilford.....				1					1
Halifax.....	1	8	1	3					13
Harnett.....		6						1	7
Haywood.....						1			1
Henderson.....									0
Hertford.....									0
Hoke.....									0
Hyde.....									0
Iredell.....	1								1
Jackson.....									0
Johnston.....		6			4	1		2	13
Jones.....		1		1					2
Lee.....	2	2		1				1	6
Lenoir.....	1								1

[illegible]

July 1, 1943 to July 1, 1944

The following statement shows the number of requests received by counties and from what sources requests were made:

Counties	Sheriff's Depts.	Police Depts.	Highway Patrol	Solicitors	Judges	Executive Depts.	Coroners	Misc.	Totals
Alamance	3	4		1				3	11
Alexander									0
Alleghany	1								1
Anson	2								2
Ashe	6								6
Avery									0
Beaufort	1	3	1				1		6
Bertie	1	1	3	2					7
Bladen	4								4
Brunswick			1	1					2
Buncombe	1			2				1	4
Burke						1			1
Cabarrus									0
Caldwell			1						1
Camden									0
Carteret									0
Caswell			1						1
Catawba	1	1	1						3
Chatham									0
Cherokee		1	1						2
Chowan		2							2
Clay									0
Cleveland	1								1
Columbus	3	1							4
Craven			1				1	1	3
Cumberland		3							3
Currituck									0
Dare									0
Davidson		8				1			9
Davie									0
Duplin	3	5							8
Durham		1							1
Edgecombe								1	1
Forsyth									0
Franklin	9	1	1					1	12
Gaston	2								2
Gates									0
Graham				1					1
Granville	4							4	8
Greene									0
Guilford	1								1
Halifax	7	5				1			13
Harnett	2	4						1	7
Haywood				1					1
Henderson									0
Hertford									0
Hoke									0
Hyde									0
Iredell	1								1
Jackson									0
Johnston	6	6	1						13
Jones	2								2
Lee	4	1	1						6
Lenoir	1								1

Counties	Sheriff's Depts.	Police Depts.	Highway Patrol	Solicitors	Judges	Executive Depts.	Coroners	Misc.	Totals
Lincoln.....	6	2							8
Macon.....									0
Madison.....									0
Martin.....	3	1							4
McDowell.....	1							1	2
Mecklenburg.....		1				2			3
Mitchell.....	1								1
Montgomery.....	7								7
Moore.....	1	5	1					1	8
Nash.....	5	3						1	9
New Hanover.....	1								1
Northampton.....	2	1		1					4
Onslow.....	1	2		1				1	5
Orange.....		2						1	3
Pamlico.....									0
Pasquotank.....	2	4		1		1			8
Pender.....	7								7
Perquimans.....									0
Person.....									0
Pitt.....		2				1			3
Polk.....									0
Randolph.....	2	1		1					4
Richmond.....	7	11						1	19
Robeson.....	1	4	1					1	7
Rockingham.....		2	2	1					5
Rowan.....									0
Rutherford.....	2	1						1	4
Sampson.....	5	1						1	7
Scotland.....	3	1							4
Stanly.....									0
Stokes.....									0
Surry.....	2	1	2					1	6
Swain.....									0
Transylvania.....							1		1
Tyrrell.....	1								1
Union.....	1	2					1		4
Vance.....	3	1							4
Wake.....				1	1	5		3	10
Warren.....									0
Washington.....	1		1						2
Watauga.....	1	1	1					1	4
Wayne.....	1	3	1			1			6
Wilkes.....	1							1	2
Wilson.....	1	2						1	4
Yadkin.....	6								6
Yancey.....			1						1

**TOTAL TYPES OF CRIMES INVESTIGATED IN
VARIOUS COUNTIES:**

	1942-43	1943-44
Assault	16	17
Burglary	123	147
Embezzlement	31	20
Homicide	43	48
Larceny	18	20
Robbery	9	12
Sex Offenses	9	11
Miscellaneous	38	50
	<u>287</u>	<u>325</u>

**TOTAL REQUESTS FROM LAW ENFORCEMENT
AGENCIES:**

	1942-43	1943-44
Sheriff's Departments	123	141
Police Departments	96	101
Highway Patrol	19	23
Solicitors	13	14
Judges	1	1
Executive Departments	14	13
Coroners	3	4
Miscellaneous	18	28
	<u>287</u>	<u>325</u>

TOTAL REQUESTS RECEIVED FROM EACH JUDICIAL DISTRICT

District	1942-43	1943-44
First	13	17
Second	15	20
Third	45	33
Fourth	31	32
Fifth	8	8
Sixth	13	16
Seventh	19	22
Eighth	10	14
Ninth	18	14
Tenth	18	23
Eleventh	0	7
Twelfth	15	10
Thirteenth	26	37
Fourteenth	2	5
Fifteenth	13	12
Sixteenth	16	18
Seventeenth	10	9
Eighteenth	9	8
Nineteenth	1	4
Twentieth	4	4
Twenty-first	1	12
Total	<u>287</u>	<u>325</u>

The following statement shows the volume of work performed by the Technical Division for each month during the period from July 1, 1942 to July 1, 1943:

	1942						1943						Total
	July	Aug.	Sept.	Oct.	Nov.	Dec.	Jan.	Feb.	Mar.	April	May	June	
Fingerprint Examinations-----	18	5	13	17	3	6	14	7	21	10	19	11	144
Firearms Examinations-----		1		1			1			1	3		7
Document Examinations-----	3		2	3	2	4	12	3	1	1	3	4	38
Medico-Legal Examinations-----	2	1	1		5	2	1	2	3	2	2	2	23
Psychograph Tests-----	1								5		2	7	15
Microscopic Examinations-----							2	2	1	5	1		11
Photographs Printed-----	16	6	13	17	3	6	12	14	23	5	21	10	150
Ultra-Violet Ray Examinations---							1	1					2
Sound Equipment----								2	1				3
TOTALS-----	40	13	29	38	13	18	43	31	55	28	51	34	393

The following statement shows the source of requests and types of work performed by the Technical Division during the period from July 1, 1942 to July 1, 1943:

	Sheriffs' Depts.	Police Depts.	Highway Patrol	Solicitors	Judges	Exec. Depts.	Coroners	Misc.	Total
Fingerprint Examinations.....	60	68	10	2		2		2	144
Firearms Examinations.....	3	3				1			7
Document Examinations.....	12	14	1	2		7		2	38
Medico-Legal Examinations.....	12	5	1			3	1	1	23
Psychograph Tests.....	3	9				3			15
Microscopic Examinations.....		3				2		6	11
Photographs Printed.....	64	59	8	2		6	1	10	150
Ultra-Violet Ray Examinations.....		2							2
Sound Equipment.....	3								3
TOTALS.....	157	163	20	6	0	24	2	21	393

The following statement shows the volume of work performed by the Technical Division for each month during the period from July 1, 1943 to July 1, 1944:

	1943						1944						Total
	July	Aug.	Sept.	Oct.	Nov.	Dec.	Jan.	Feb.	Mar.	Apr.	May	June	
Fingerprint Examinations.....	6	14	15	9	16	11	5	8	17	13	20	10	144
Firearm Examinations.....	1				1		1	2		5	2		12
Document Examinations.....				2	2	3	2	2		1			12
Medico-Legal Examinations.....	3	3	1	3	4	1	2	2	1	3	6		29
Psychograph Tests.....	5	1	4		1	1		1	2				15
Microscopic Examinations.....		2											2
Photographs Printed.....	8	13	16	9	19	12	7	8	14	13	22	5	146
Ultra-Violet Ray Examinations.....						2							2
Sound Equipment....	4	1						3					8
Totals.....	27	34	36	23	43	30	17	26	34	35	50	15	370

The following statement shows the source of requests and types of work performed by the Technical Division during the period from July 1, 1943 to July 1, 1944:

	Sheriffs' Depts.	Police Depts.	Highway Patrol	Solicitors	Judges	Exec. Depts.	Coroners	Misc.	Total
Fingerprint Examinations-----	64	67	6	-----	-----	6	-----	1	144
Firearms Examinations-----	7	5	-----	-----	-----	-----	-----	-----	12
Document Examinations-----	2	5	1	-----	-----	3	-----	1	12
Medico-Legal Examinations-----	11	15	1	-----	-----	-----	1	1	29
Psychograph Tests-----	10	3	1	-----	-----	-----	-----	1	15
Microscopic Examinations-----	-----	-----	-----	-----	-----	-----	-----	2	2
Photographs Printed-----	58	57	10	1	-----	17	-----	3	146
Ultra-Violet Ray Examinations-----	1	-----	-----	-----	-----	1	-----	-----	2
Sound Equipment-----	4	1	-----	-----	-----	-----	-----	3	8
TOTALS-----	157	153	19	1	0	27	1	12	370

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BRIEF SUMMARY
of a few
CASES INVESTIGATED DURING PERIOD
July 1, 1942 to July 1, 1944

*State v. Ellis Boswell and James Oliver;
Andrews Brothers, Victims, Robbery*

On the night of August 7, 1942, the Andrews Brothers were held up and robbed in front of their place of business in Burlington, N. C. There was taken from them approximately \$300 in cash and \$200 in checks. Sheriff E. L. Ivey and his Deputies arrested Ellis Boswell and James Oliver, two Negroes, as perpetrators of the crime. Boswell confessed and named Oliver as his accomplice. Oliver stoutly denied his guilt.

At the request of Sheriff Ivey, the S.B.I. sound and recording equipment was set up in the Alamance County Jail in the cell of James Oliver. Boswell was placed in the cell with Oliver. A recording was made of their conversation. It was evident from this recording that Oliver was guilty. Upon being questioned further by Sheriff Ivey and an S.B.I. Agent, Oliver made a full confession which was recorded on a Bureau recording machine.

On August 19, 1942, Oliver and Boswell entered a plea of guilty in Alamance Superior Court. Judge W. J. Bone sentenced Oliver to fifteen to twenty years, and Boswell to thirteen to eighteen years in State Prison.

*State v. James F. Kever and Peter F. Baxter;
Belk-Shrum Store, Victim, Burglary*

On December 27, 1943, Sheriff George E. Rudisill, of Lincoln County, requested the assistance of the S.B.I. in making his investigation of a burglary of the Belk-Shrum Department Store, of Lincolnton, and several other recent burglaries during the early morning hours of December 10, 1943. About \$35 was stolen from the cash register. Several suits were taken from the racks but not removed from the store. Night Policeman Carpenter saw two men run out of the store and shot at them several times, but they escaped.

On the night of December 10, 1943, James Franklin Kever, white, age 23, of Lincolnton, was arrested in connection with the theft of an automobile in Lincolnton, and on December 24, 1943, Peter Franklin Baxter, white, of Lincolnton, was arrested in Rocky Mount. Both of these boys confessed to breaking and entering the Belk-Shrum Department Store in Lincolnton on December 10, 1943. Kever and Baxter also confessed to breaking and entering the City Service Station, Lincolnton, December 6, 1943, and stealing sixteen Goodyear tires and

a Ford pick-up truck; also, to stealing a Pontiac Sedan belonging to W. D. Hoyle, of Lincolnton, on December 6, 1943. They also confessed that on the night of December 5, 1943, they attempted to rob Mr. Frank Barkley, who lived alone about one mile of Lincolnton, but were unsuccessful in doing so. During the attempt to rob Mr. Barkley, they brutally beat him over the head with a piece of iron. Barkley was so badly injured he had to be sent to a hospital and subsequently died as a result of the injuries.

Keever and Baxter were tried and convicted in the Lincoln County Superior Court at the January 1944 term of Court for breaking into and entry of the Belk-Shrum Department Store, the City Service Station, and the theft of the auto belonging to W. D. Hoyle. Each received a sentence of ten years for breaking and entry of Belk-Shrum and City Service Station, and three to five years for theft of the Hoyle automobile. They were not tried for the Barkley case because of the serious injuries to Barkley. This case was continued to July term of court to await the outcome of Barkley's injuries. Barkley has since died, and Keever and Baxter were tried on a murder charge at the July 1944, term of Lincoln County Superior Court, were convicted and sentenced to life imprisonment by Judge J. C. Rudisill, presiding.

State v. E. M. Bryant
Mrs. Cora Brewer and Mrs. Bessie Board, Victims,
Obtaining Money Under False Pretenses

Commissioner of Paroles Hathaway Cross and Chief of Police E. R. Richardson, of Thomasville, requested the S.B.I. to make an investigation of the obtaining of money under false pretenses by one Eugene M. Bryant.

The investigation disclosed that Bryant, while holding a revival meeting in the Church of God in High Point, had, by false statements, obtained from Mrs. Bessie Board, of High Point, the sum of \$180 in return for which Bryant would obtain a parole for the husband of Mrs. Board and the son of Mrs. Brewer, both of whom were convicts serving sentences. Bryant stated that he was a close friend of ex-Governor Clyde R. Hoey, and also that he had worked for the Penal Division of the State of North Carolina. He told these two women that he would use his political influence, which was enormous, to secure the paroles.

Bryant was located working in Baltimore, Maryland, and when interviewed by an S.B.I. Agent and informed of the charges against him, he readily admitted his guilt and expressed a desire to make restitution. He voluntarily returned to North Carolina and gave himself up to officers.

Bryant was tried before Judge Hubert Olive at the November 1943 term of Davidson County Superior Court, pled guilty, and in view of the fact he had no previous criminal record and had made full restitution, he was given twelve months on the roads, suspended under the usual conditions.

*State v. Robert Camp;
Katherine Brooks, Victim,
Trespass and Peeping Tom*

About 10:50 p.m., June 17, 1944, Katherine Brooks, white, 16 years of age, of Cliffside, heard someone in the front yard of her home. She went to the front door, and a man's voice said to her, "Come out here, I want to see you." She told him he had better leave and closed the door. At about 11:40 p.m., a man was at her bedroom window looking through the screen and told her to come out in the yard. She then recognized the Negro as Robert Camp who worked for her father at the textile mill in Cliffside. She told Camp she knew he was Robert Camp; that he had better leave before she called for help, whereupon he ran away.

Investigation of Camp disclosed that he was what is commonly known as a "peeping tom." He was arrested, tried in Rutherford County Recorder's Court on June 20, 1944, and sentenced to 18 months on the roads on a charge of trespass and as a peeping tom.

Sheriff C. C. Moore, of Rutherford County, requested the assistance of the S.B.I. in this case.

*State v. Vivian Campbell;
Roland Campbell, Victim, Murder*

Roland Campbell, a well-to-do Negro of Bladen County, was fatally shot at his home on July 4, 1942. Sheriff H. M. Clark requested the assistance of the S.B.I. in ascertaining the true facts in the case. He had arrested the victim's daughter, Vivian Campbell, age 19, who admitted she had shot her father, but claimed she had done so in defense of her mother who called for help, saying Campbell was choking her.

At Sheriff Clark's request, the Bureau photographer was sent to Elizabethtown to take photographs of the body, showing the wounds on the body, and of the scene of the crime. He also brought Vivian Campbell to the S.B.I. in Raleigh for questioning and for a lie detector test. The lie detector test showed clearly she was not telling the truth in saying she shot her father in defense of her mother. When informed of this fact, she then admitted she shot him while he was in bed asleep and gave as her reason continued abuse of her and her mother. She was convicted and sentenced to two years in State Prison by Judge C. E. Thompson.

*State v. Ike Cheek;
Ernest Cheek, Victim, Murder*

On the night of January 6, 1944, Ernest and Ike Cheek, two Negro brothers, went to the home of Ike, near Ramseur. Both were drunk. Ike went into his house and began beating his wife. Ernest went into the house and tried to stop Ike beating his wife. Ike then shot and fatally wounded Ernest.

Sheriff W. M. Bingham, of Randolph County, requested the assistance of the S.B.I. in making his investigation of the shooting. The investigation resulted in the arrest of Ike Cheek on a charge of murder.

At the April 1944, term of Randolph County Superior Court, the attorneys for Ike Cheek tendered a plea of involuntary manslaughter which was accepted by the State. Judge F. M. Armstrong, presiding, sentenced him to not less than two nor more than five years in State

*State v. Luther Allen, Carlie Hilliard,
Rudolph Lanier, Carlo Scarborough, Nyal
Brooks, LeRoy Micenheimer, all white;
Elmer Holmes and Jake Walker, colored;*

Coble Dairy Products Company, Victim, Larceny

The Coble Dairy Products Company, of Lexington, which uses a large amount of sugar in its business, reported to the Lexington Police Department, on September 17, 1943, that they had information that some of their employees were stealing quantities of its sugar.

Chief of Police W. R. Lanning made an investigation and requested the help of the S.B.I. As a result of this joint investigation, six white men and two Negroes were arrested and charged with larceny and receiving of sugar from the Coble Dairy Products Company.

All of these defendants, as named above, on September 24, 1943, in Davidson County Recorders Court, entered pleas of guilty as charged and were sentenced by Judge Paul Stoner to serve eighteen months on the roads, suspended for five years, and each required to pay the costs and fines ranging from \$50 up to \$300.

State v. Allen Carithers and Parrot Cade;

B. T. Collins, Victim,

Assault With Deadly Weapon With Intent to Kill

On the night of May 7, 1943, about 11:30, Highway Patrolman B. T. Collins, of Gaston County, attempted to stop a 1941 Buick sedan with three occupants, but the driver refused to stop, and in an attempt to turn off the highway just inside of the city limits of Gastonia, ran in behind a filling station and hit a post. Patrolman Collins arrested the driver of the car and told him to move over. Collins got under the steering wheel and attempted to drive the car from behind the service station, but it would not start. Collins got out of the car to see what the trouble was. After getting out, he realized his pistol was missing and started back towards the occupants of the car, and the driver of the Buick opened fire on Collins, shooting at him three times. One of the bullets hit him in the right arm near the elbow. Collins fell to the ground and the three occupants of the car, one a girl, fled. A short time later, near where Collins was shot, a Ford pick-up truck was stolen.

Sheriff C. O. Robinson, of Gaston County, requested the assistance of the S. B. I. in making his investigation. On May 9, 1943, the Highway Patrol at Fayetteville arrested Parrott Cade and Colene Johnson. Cade was an escaped convict, having escaped on May 5, 1943. He and Colene Johnson admitted that they were in the car at Gastonia when Patrolman Collins was shot and named Allen Carithers, also an escaped convict, as the third occupant of the car and as the person who shot Patrolman Collins. In October 1943, Allen Carithers was arrested by officers in Jacksonville, Florida, upon information

from a companion of Carithers that Carithers was wanted at Gastonia, N. C., for shooting a State Highway Patrolman.

On November 30, 1943, Allen Carithers and Parrot Cade were tried in Gaston County Superior Court. Carithers was found guilty of assault with a deadly weapon with intent to kill and larceny of an automobile. His sentence was ten years for the assault and five years for auto theft, each sentence to run consecutively and to begin at the expiration of sentence which he is serving. Cade was convicted of aiding and abetting in the shooting of Collins and also in larceny of auto. He was sentenced to serve five years for aiding and abetting in the shooting of Collins, and to two years for aiding and abetting the larceny of an auto. The five year sentence to run concurrently with the thirty year sentence now being served, and the two year sentence is to begin at the expiration of the thirty year sentence. Judge W. H. S. Burgwyn was the presiding judge.

*State v. William D. Ham, Thurman Hardy,
Raymond Hardy and Ernest Vander Evans;
Ardella Evans, Victim, Robbery*

On October 1, 1943, about 8 p.m., Ardella Evans, white, age 77, living between Pine Level and Selma, while at her home, was robbed of \$5,000 in cash. She had the money in a pocket sewn into her underskirt.

Sheriff Kirby L. Rose, of Johnston County, requested the assistance of the S. B. I. in making his investigation. He stated that he and his deputies had arrested four suspects: William D. Ham, Thurman Hardy, Raymond Hardy, and Ernest V. Evans. As a result of an intensive investigation by Sheriff Rose, his deputies, Hales and Uzzle, and S. B. I. Agent, sufficient evidence was obtained against these four suspects, and they were indicted and tried at the December 1943 term of Johnston County Superior Court. A Nol Pros was taken as to Ernest Evans, due to his physical and mental condition. William D. Ham, Thurman Hardy, and Raymond Hardy were found guilty and sentenced by Judge Clawson Williams to serve from seven to ten years in State Prison.

*State v. Marvin Norton and His Wife Bell Harris Norton;
T. J. Flake, Victim, Murder*

On April 27, 1943, T. J. Flake, about 60, a roadhouse operator, was shot to death at his place of business about three miles out of Rockingham on the Rockingham-Hamlet highway. At about 12:45 a.m., he was killed by a shot gun fired through a window.

Sheriff Carl Holland, of Richmond County, requested the assistance of the S. B. I. He already had arrested and had in jail the following suspects: Marvin Norton, his wife, Bell Norton, Bell Norton's daughter and son by a previous marriage, Margaret and Douglass Harris. Sheriff Holland, local officers, and S. B. I. Agents, working together, made an extensive investigation which resulted in solving the case.

The Norton family who lived about 115 feet from Flake's roadhouse had done considerable drinking and causing a disturbance at Flake's which led up to the shooting.

Under persistent questioning, Marvin Norton finally confessed to having shot and killed T. J. Flake; that no one was implicated in the shooting but himself; and that he had thrown the gun in a branch back of his home. It was later recovered from the branch. He stated that his wife and stepdaughter "had had a lot of trouble with Mr. Flake, and that he was fed up on the whole mess."

Norton was indicted for first degree murder, and his wife, Bell Harris Norton, as an accessory after the fact. Solicitor Ed. Gibson accepted a plea of second degree murder by Marvin Norton, and a plea of guilty of accessory after the fact by Bell Harris Norton. Judge Jeff D. Johnson, presiding, on May 27, 1943, sentenced Marvin Norton to thirty years in the State Prison, and his wife, Bell Harris Norton, to serve from five to seven years.

*State v. McKinley Jeeter, Alias Ike Byrd;
A. L. Fitzgerald, Robert Nixon, et al., Victims
First Degree Burglary*

On July 24, 1943, Corporal Fred Fleagle, State Highway Patrol, stationed at Reidsville, requested the assistance of the S. B. I. in investigating four first degree burglaries on the night of July 23, 1943, in Caswell and Rockingham counties. One of the burglaries occurred at the home of A. L. Fitzgerald, of Route 1, Pelham, where about \$60 was stolen. Another burglary occurred at the home of Robert Nixon, of Route 1, Pelham; \$22 was stolen.

Investigation developed the fact that a long series of first degree burglaries had been committed since June 1942, in Rockingham, Guilford, Caswell, and adjoining counties. The investigation of these crimes continued until February 14, 1944, and during that period numerous other first degree burglaries were committed in these counties. The crimes were so similar that officers were of the opinion that they were being committed by the same person or persons. The following officers worked coöperatively in an extensive investigation: Corporal Fred Fleagle of the State Highway Patrol, Chief of Police R. A. Allen of Reidsville, Sheriff J. P. Story and Deputies of Guilford County, Sheriff E. L. Ivey, and Deputies of Alamance County, Constable M. M. Gerringer of Elon College, Sheriff L. W. Worsham of Rockingham County, and the S.B.I.

As a result, McKinley Jeeter, Alias Ike Byrd, a Negro, was arrested about 7 a.m., February 13, 1944, in Reidsville and confessed to having committed the following first degree burglaries:

Rockingham County.....	21
Guilford County.....	33
Alamance County.....	9
Durham County.....	4
In Virginia.....	4

McKinley Jeeter was tried at the March 1944, term of Rockingham Superior Court on a first degree burglary charge, found guilty, and sentenced to life imprisonment by Judge J. H. Clement, presiding.

*State v. Earl Kirksey;
Sylvester Freeman, Victim, Murder*

On July 2, 1943, Sylvester Freeman, colored, was shot and killed while in bed at his home in Columbus County.

On July 3, 1943, Sheriff H. M. Clark phoned the S.B.I. stating he had arrested an Indian by the name of Earl Kirksey as a suspect and wanted the Bureau to give Kirksey a psychographic (lie detector) test. He brought Kirksey to the S.B.I., and he agreed to take the test. However, before the test was completed, he made a full confession in just eighteen minutes after the interrogation began. He told where he had hidden the gun with which he killed Freeman, and it was recovered by Sheriff Clark. Kirksey stated he was drunk at the time of the killing.

He was tried at the September 1943, term of Columbus County Superior Court, pled guilty to second degree murder and sentenced to serve a term of twenty years in the State Prison.

*State v. Jesse A. Nicholson;
Gaston County School Buildings, Churches and Dwellings,
Victims, Breaking and Enterings*

On February 24, 1944, Sheriff Clyde O. Robinson, of Gaston County, requested the assistance of the S.B.I. in his investigation of a series of breaking and entering of school buildings, churches, and dwelling houses which had been committed in Gastonia and Gaston County during the past two months. Many typewriters, clocks, shotguns, suitcases, clothing, and much money had been stolen.

As a result of the investigation, Jesse A. Nicholson was arrested and admitted breaking into and entering three schoolhouses in Gastonia, two churches in Gastonia, a schoolhouse in Chimney Rock, a schoolhouse in Cramerton, a schoolhouse in Lowell, and the residences near Cramerton. Nicholson told officers where he had disposed of the stolen property and most of it was recovered.

Nicholson was tried at the March 1944, term of Gaston County Superior Court, pled guilty and was sentenced to sixteen to twenty years in State Prison by Judge J. C. Rudisill, presiding.

*State v. James Quick, Robert Aiken, and Joe Johnson;
Gores Wholesale Company and Seago Bottling Works Victims,
Breaking and Entering, Larceny and Receiving*

Sheriff Carl Holland, of Richmond County, requested the assistance of the S.B.I. in his investigation of the breaking into and entry of Gores Wholesale Company on July 6, 1943, and the Seago Bottling Company on July 15, 1943, both of Rockingham.

At the time of making this request, Sheriff Holland had under arrest three suspects: James Quick, Robert Aiken, and Joe Johnson. He stated he had very little on these suspects and was unable to get any information from them. A total of 800 pounds of sugar was taken from these two plants.

As a result of questioning by Sheriff Holland and an S.B.I. Agent, confessions were obtained from Quick, Aiken, and Johnson. All of them implicated Luke Burns, who was also arrested.

At the September 1943, term of Richmond County Superior Court, Judge W. H. Bobbitt consolidated the two cases against the defendants. James Quick, Robert Aiken, and Luke Burns were convicted and given the following sentences: Quick, three years; Aiken, one year; and Burns, six months. Joe Johnson was taken ill and not tried until the October 1943 term of Court, at which time he was convicted and given a sentence of three to five years in the State Prison by Judge Bobbitt.

*State v. Andrew Jackson Hudson;
Mrs. Emma Fincher Hudson, Victim, Murder*

Sometime during the night of August 10, or early morning hours of August 11, 1943, Mrs. Emma Fincher Hudson was murdered while sleeping in her bed at her home in Waxhaw. About 2 a.m., August 11, her husband, Andrew Jackson Hudson, called to a neighbor living next door that someone had attacked him, and that he needed the care of a doctor. When this neighbor, Mr. W. B. Keziah, a policeman, reached the Hudson home, he found Mrs. Hudson in her bed with her head crushed, blood all over the pillow and on the sheet, and she was lifeless. He found blood coming from a wound in the head of Mr. Hudson, whom he immediately sent to the hospital.

Sheriff B. F. Niven, of Union County, called on the S.B.I. to assist him in investigating the case. As a result of this investigation, it was believed that Andrew Jackson Hudson himself had murdered his wife.

On August 23, 1943, the Grand Jury of Union County returned a true bill of first degree murder against him, and he was held for trial at the October 1943, term of Union County Superior Court, at which term he was tried, convicted of second degree murder, and sentenced to serve a term of thirty years in the State Prison.

*State v. Harvey Wilfong;
Mrs. Lula Huffman, Victim
First Degree Burglary*

Mrs. Huffman, age 27, who lived alone in the southern part of Catawba County, returned to her home about 11 p.m. on August 28, 1942, after finishing her work at a hosiery mill in Newton. Her husband was doing defense work in Newport News, Virginia. She went to her kitchen to write a letter to her husband and after doing so, she went to her bedroom. Before she could turn on the light, someone grabbed her and threw her on the bed. From the odor, she knew it was a Negro man. He attempted to assault her. She put up a fight. The intruder, being unable to assault her, took a garden hoe and beat her over the head, inflicting serious injuries. She did not become completely unconscious, but pretended to be completely knocked out. The intruder went into the kitchen and while he was there, she ran out of the front door and to the home of a neighbor, who notified Sheriff Ray Pitts. When he arrived, he found the bed was afire, also the

walls and floor of the bedroom. The fire was put out, and Mrs. Huffman removed to a hospital in Hickory.

Investigation by Sheriff Ray Pitts revealed that a Negro by the name of Harvey Wilfong, age 20, was not at home the night of the crime. He was arrested by Highway Patrolman Beaver and Chief of Police E. W. Lentz, of Hickory.

Upon examination of Wilfong's hands, it was found that the inside portion of the middle finger on the right hand was a fresh wound. He admitted that he was in Mrs. Huffman's house, and that she bit the piece out of his finger during the time he was trying to assault her. He was positively identified by Mrs. Huffman.

About \$27 in cash and an old copper penny were stolen from Mrs. Huffman's pocketbook. He admitted taking them and showed where he had hidden them; all the money and penny being recovered.

He was tried in Catawba County Superior Court on September 14, 1942, for first degree arson. He was convicted and sentenced by Judge Zeb V. Nettles to the gas chamber October 23, 1942.

*State v. Rudolph Chambers and Paul Consar;
Doris Jackson, Victim, Murder*

Doris Jackson, a colored male, was killed by a pistol shot on the night of November 29, 1942 at the M and M Dance Hall, located on Highway 87, between Fayetteville and Elizabethtown.

Deputy Sheriff Alton Dunn, of Cumberland County, requested the assistance of the S.B.I. in the use of its sound equipment in the interrogation of several suspects whom he was detaining in this case. These suspects were Ruthaw Chambers, Paul Consar, Tommy Murphy, Willie McMullan, and Carlton Murphy. They were placed in a room in which was a concealed microphone. As result of information obtained, it was decided that Ruthaw Chambers and Paul Consar were the most probable suspects. These two were then interrogated by officers from Sheriff N. H. McGeachy's office, Fayetteville Police Department, and Highway Patrol. At the conclusion of this interrogation, an S. B. I. Agent questioned Paul Consar, basing his questions on information obtained by the other officers in their questioning. In a few minutes, Consar confessed, involving only himself and Ruthaw Chambers, who then also confessed. The confession was recorded on a recording machine.

The shooting of Doris Jackson was the outcome of an argument between him, Consar, and Chambers.

Consar and Chambers were tried at the March 1943, term of Cumberland County Superior Court and pled not guilty. Solicitor F. Ertel Carlyle stated he would not ask for a verdict greater than second degree murder. The verdict was guilty of manslaughter. Chambers was sentenced to prison for five years, sentence suspended on five years probation on condition he pay the costs in the case, remain on farm and work; also, that he stay away from Fayetteville for five years. Consar was sentenced to prison for three years, sentence suspended on four years probation on condition that he pay the costs.

*State v. Stancil Jackson;
Ella Jackson, Victim, Murder*

On August 27, 1943, the S.B.I. was requested by Chief of Police L. S. Allen, of Rockingham, to assist him in investigating the murder of Ella Jackson, of Rockingham, who was found shot to death at the back of her home at about 11:30 p.m., August 26, 1943.

As a result of the investigation by Chief Allen and S.B.I. Agent, it was determined that Stancil Jackson had shot and killed his wife because she had taken an auto ride with another man.

He was indicted on a charge of murder, tried, convicted of second degree murder, and on January 12, 1944, in Richmond County Superior Court, was sentenced to serve a term of not less than ten nor more than twelve years in the State Prison. Judge Allen H. Gwynn presided at this trial.

*State v. Lewis Moody;
John A. Kee, Victim, Murder*

On the morning of June 8, 1942, the body of John A. Kee, colored, was found in a wooded area about fifteen miles from Jackson, N. C. It was lying beside a foot path, and the clothing had been practically burned from the body. The area for several hundred feet surrounding the body had been recently burned over. Upon a close examination of the body, it was found that John Kee had been stabbed about twenty-five times.

Investigation by Sheriff J. C. Stephenson disclosed that Lewis Moody, colored, was the last person seen with victim the night before his body was found. Questioned by Sheriff Stephenson and S.B.I. Agents, Moody finally admitted being with John Kee until an early hour on June 8, about 1:00 a.m. He stated that he and Kee had some words over Moody's wife; that Kee made a motion as if to pick up something from the ground, whereupon he, Moody, struck him over the head with a stick; knocked Kee down; jumped on him; and stabbed him twice. He stated that the woods were set on fire so bloodhounds could not follow a trail.

Moody was tried at August 1942 term of Northampton Superior Court, found guilty and sentenced to death.

*State v. Willie Martin;
Mrs. Josie Key, Victim,
Attempted Criminal Assault*

Corporal Lee Phillips of the State Highway Patrol requested assistance of S.B.I. in this case.

On November 4, 1942, about 11:30 a.m., Mrs. Josie Key, of Elkin, Route one, Wilkes County, was assaulted in her home by a Negro man. Mrs. Key lived by herself.

She was sitting by a fire churning butter. She got up to go into a hall, when a Negro man pushed the door open, grabbed her, threw her

across a bed, beat and choked her, jerked her underclothes off in an unsuccessful effort to criminally assault her. He became frightened at her screams for help and ran away. She then went to the home of a neighbor and reported the attack. As result of an immediate investigation by Corporal Phillips and local officers, Willie Martin, a Negro, was placed in jail. Martin and several other Negroes were lined up in the jail for possible identification by Mrs. Key. She immediately identified Martin as the man who had attacked her.

Martin was tried at the December 1942, term of Wilkes County Superior Court, was found guilty by the jury on a charge of assault with intent to commit rape and sentenced by Judge Felix Alley to serve a term of fifteen years in the State Prison.

*State v. Tom McAlister;
James Malpass Service Station, Victim, Breaking and Entering*

The James Malpass Service Station, Pender County, was entered on September 12, 1942, and a quantity of merchandise was stolen. Sheriff J. T. Brown, of Pender County, requested a fingerprint examination be made. This examination was done, and a number of good latent prints were obtained.

Sheriff Brown had arrested Tom McAlister as a suspect. His fingerprints were taken and compared with the latents found at scene of the crime, and they proved to be identical.

He was tried at the October term of Pender County Court, before Judge Henry A. Grady. After deliberating for eight minutes, the Jury found McAlister guilty, and Judge Grady sentenced him to three and one-half years in State Prison.

*State v. W. M. Love;
Luther McLamb, Victim;
Obtaining Money Under False Pretense*

As a result of an investigation in a similar case, it was ascertained that W. M. Love had obtained money from certain convicts serving time with a promise to obtain a parole or commutation of sentence.

At the request of Governor Broughton and Commissioner of Paroles, Hathaway Cross, an investigation of this case disclosed that Luther McLamb, a convict, had paid Love \$136 to secure for him a parole or commutation of his sentence. He also paid Love \$150 to secure a parole or commutation of sentence for a convict named E. L. Summerlin. In both cases, Love stated that his, Love's wife, was a welfare worker and that she was related to Hathaway Cross, the Commissioner of Paroles. As a result of this relationship, he could and would use his influence to obtain a parole or commutation of sentence.

Love was located serving time in Baltimore, Maryland, and brought back to North Carolina. He admitted his guilt, and in the November 1943, term of Halifax County Superior Court was tried and sentenced by Judge R. Hunt Parker to serve a sentence of not less than five nor more than eight years in the State Prison.

*State v. John Henry Lee;
Mrs. Harry McPherson, Victim, Rape*

Mrs. Harry McPherson, white, about 23 years of age, who lived about two miles north of Camden, N. C., was raped in her home by a young Negro at about 7:00 a.m., on September 26, 1942.

Solicitor Chester Morris requested the aid of the S.B.I., and one of its Agents reported to him in Elizabeth City about 6:30 p.m., September 26. Upon arriving there, the Agent was advised that John Henry Lee, a suspect, had been arrested after bloodhounds, brought to scene of the crime, had trailed him to his home. Lee strenuously denied any part in the crime. He was positively identified by Mrs. McPherson as the man who raped her.

Lee was placed in the Chowan County Jail for safe-keeping. Because of the high feeling against Lee, Solicitor Chester Morris ordered him to be transferred to State Prison for safe-keeping until date for his trial.

On October 5, 1942, Lee was taken from State Prison by S.B.I. Agents and carried to Camden County for trial. Due to the feeling against Lee in Camden County, Governor Broughton, at the request of Solicitor Morris, caused 20 members of the State Highway Patrol to be on duty in Camden to prevent any possible disorder during Lee's trial. Lee was duly indicted by the Grand Jury and on October 6, 1942, was placed on trial. After the Jury was out only fifteen minutes, a verdict of guilty was returned. Judge J. Paul Frizzelle, presiding, sentenced Lee to die in the gas chamber at State's Prison on November 27, 1942.

On the afternoon of October 7, 1942, Lee was returned to State's Prison by S.B.I. Agents to await execution.

*State v. William T. McNeal;
Oscar Michael, Victim, Murder*

Oscar Michael, white, age 42, a taxi driver at Southern Pines, was found about 1:30 a.m., November 2, 1943, in the yard of the home of Jim Bathea, of Southern Pines, in a dying condition as a result of numerous knife wounds. Bathea notified Chief of Police C. E. Newton, of Southern Pines, of his finding Michael. When Chief Newton arrived at Bathea's home, Michael was dead. Bathea told Chief Newton at about 1:20 a.m., he heard someone calling his name, he turned on the porch light and went out. As he did so, he saw a man staggering into his yard, and Michael's taxi being driven off at high speed. Michael said he had been cut, was dying, and asked him to call Chief Newton and an ambulance.

Chief Newton and Highway Patrolman J. H. Coman requested assistance of the S.B.I. in investigating the case. Michael's taxi was found abandoned in Sanford and it was processed for latent fingerprints. Several good latents were found.

Chief of Police Paul Watson, of Sanford, received information from a Negro woman in Sanford that on November 2, 1943, William T. McNeal, a Negro soldier stationed at Camp Mackall, had come to his

home in Sanford driving a car, and that his clothes were very bloody. He told his wife he had some trouble with a taxi driver in Southern Pines and had to cut him. Officers then went to Camp Mackall, where the Military Police picked up McNeal.

He was fingerprinted, and the prints compared with the latents found in Michael's taxi, and they proved to be identical. When confronted with this identification, McNeal admitted killing Michael.

During the week of January 24, 1944, in Superior Court of Moore County, McNeal was tried, convicted of murder in the second degree. He was sentenced by Judge Allen H. Gwynn to serve a sentence of 25 to 30 years in State Prison.

*State v. Sid Crawley;
Mr. and Mrs. Tom Mull and Infant Son,
Victims, Assault with Intent to Kill*

On September 11, 1942, about 9 p.m., Mr. and Mrs. Tom Mull, while sitting on their front porch, were shot with a shotgun four or five times from a distance of fifty or sixty yards. Several of the shots struck Tom Mull in the neck and head, and also struck his one-year-old baby in the head. The baby was in Mrs. Mull's lap, but Mrs. Mull was not hit. None of the wounds were serious, however they were very painful.

Investigation by the Sheriff and S.B.I. disclosed that Sid Crawley, a neighbor of the Mull's, and Tom Mull had had trouble over division of proceeds from sales of non-tax paid whiskey; Crawley claiming he had not received his full share. A 12 gauge shotgun was found at Crawley's home, and upon ballistic tests, it proved to be the gun which fired shells found at the scene of the shooting. Officers also traced shoe tracks from scene of shooting to Crawley's home. A plaster paris cast was made, and it compared with a pair of Crawley's shoes; they proved to be identical.

Crawley was arrested and confessed the shooting. Upon trial, December 15, 1942, Crawley pled guilty and was sentenced by Judge Zeb V. Nettles to twenty months on State roads.

*State v. Willie Smith;
Spencer V. Powell, Victim, Murder*

On the night of December 31, 1942, about 11:45 p.m., Spencer V. Powell, a fifty-year-old merchant and cafe operator of Warrenton was found in his store in a dying condition as a result of blows inflicted on his head, crushing his skull. He died about fifteen minutes after being found.

Chief of Police J. W. Scott, of Warrenton, stated that he entered the store of Powell at about 11:30 p.m., at the invitation of Powell to listen to the war news, and remained about ten minutes. The only other person in the store at that time was a Negro man who later was identified as Willie Smith. Chief Scott had only been gone from the store about ten minutes when two Negro boys ran up to him and told him Mr. Powell was lying in his store in a pool of blood. The

pockets of Powell's clothing were turned inside out, indicating that robbery was the motive for the attack.

Sheriff W. J. Pinnell, of Warren County, Chief of Police J. W. Scott, of Warrenton, and S.B.I. Agents all joined in an intensive investigation with the result that it was determined that Willie Smith was the wanted murderer.

Smith left North Carolina immediately after the murder, but was finally located in Birmingham, Alabama. He waived extradition, was brought back to North Carolina and placed in Vance County Jail, at Henderson to await trial in Warren County. He was tried at the May 1943 term of Superior Court in Warren County, convicted of murder in the first degree and was sentenced to die in the gas chamber at the State Prison. Sentence complied with.

*State v. Arthur Fleming;
Lindsay Price, Victim, Murder*

On December 30, 1943, the body of Lindsay Price, colored, age 44, of Halifax County, was recovered from Chocoweege Creek that runs on the outskirts of Roanoke Rapids. He had been missing from his home since December 2, 1943.

Chief of Police H. E. Dobbins, of Roanoke Rapids, requested the S.B.I. to assist him in his investigation of the case. Investigation disclosed the fact that Lindsay Price had just sold his crop of peanuts and was carrying about \$120 at the time of his disappearance. When his body was found, his pocketbook and money were missing.

It was learned that Arthur Fleming, colored, age 20, was last seen with Price during the morning and afternoon of December 22, 1943. Fleming was arrested by A. J. Brigman, of the Roanoke Rapids Police Department. Upon being questioned, Fleming made a complete confession of the murder of Lindsay Price and implicated Sam Jones, colored, who was immediately arrested. Both were indicted for murder. Fleming was tried on February 2, 1944, in the Halifax County Superior Court, tendered a plea of murder in the second degree, which was accepted by the State and given a sentence of thirty years in State Prison. The case against Sam Jones has been continued several times, the last continuance was granted May 2, 1944, to the next term of Court.

*State v. Randall Perry;
Thomas E. Privett, Victim;
A.D.W. With Intent to Kill*

On Saturday night June 24, 1944, Thomas E. Privett, connected with the Naval Intelligence, at home on leave, was shot from ambush by an unknown person. The entire load of shot entered his right arm.

Sheriff J. P. Moore, of Franklin County, requested the assistance of the S.B.I. in making his investigation of the shooting.

Privett was at a crossroads store near his father's home in Franklin County when at about 11 p.m., he started out the back door of the store, he heard the blast of a shotgun and felt his right arm become

numb. He staggered back in the store and several of his friends rushed out of the store to search for the person firing the gun, but found no one.

The investigation that followed resulted in the arrest of Randall Perry, whom Privett had seen in the cross roads store several days previous to the shooting. On that occasion, Privett had asked Perry why he was not in the army and referred to Perry as a 4-F, which seemed to have offended Perry.

After being arrested, Perry confessed that he shot Privett because he called him a 4-F. Perry was held for trial at the next term of Franklin County Superior Court.

*State v. John Henry Braxton;
Mrs. Zee Rochelle, Victim,
Attempt Breaking and Entering*

About 1:00 a.m., May 21, 1944, Mrs. Zee Rochelle and her husband, of Elizabeth City, heard a noise at their front window and ran to the front door, turned on a light, and saw a Negro man on the front porch. He was dressed in a Naval uniform. He ran away, and Mr. Rochelle notified the police. Shortly thereafter, Mr. Mutt Scott, of the Elizabeth City Police Department arrested John Henry Braxton, a Negro, about one-half mile from the Rochelle home. He was positively identified by both Mr. and Mrs. Rochelle.

Investigation showed that Braxton was a second-class steward in the Navy, stationed at the U. S. Patrol Plane Base, Elizabeth City.

He was tried at the June 5, 1944, term of Pasquotank County Superior Court, convicted on a charge of "peeping tom," and sentenced by Judge Leo Carr to 18 months in prison.

Chief of Police Walter Spence, of Elizabeth City, requested S.B.I. assistance in his investigation of this case.

*State v. Norris McCraw and Lewis Allen Young;
Rutherfordton Bus Station, Victim, Burglary*

The Rutherfordton Bus Station was entered on the night of August 29, 1942, and about \$35.00 stolen. Entrance was gained by forcing open a window. The Bus Station was new, and the walls of white plaster. In going through the window, it was necessary for the thief to put his hands on the white plastered wall. Latent palm prints were photographed from this plastered wall.

Sheriff Moore advised that a good suspect was Norris McCraw, Negro boy 17 years of age, who had recently worked at the Bus Station.

Investigation by Sheriff Moore and S.B.I. disclosed that McCraw was in Rutherfordton on August 29 in company with another Negro boy named Lewis Allen Young. McCraw and Young were arrested in Hyattsville, Maryland by the State Police of Maryland and were brought back by Sheriff C. C. Moore of Rutherford County. An Agent of the S.B.I. took their palm prints and compared them with the prints found on the wall of the Bus Station, and it was positively identified as that of McCraw.

They were tried at the May Term Superior Court and submitted a plea of guilty. McCraw received a sentence of twelve months. Young was found to be under 16 years of age, so his case was remanded to the Juvenile Court of Rutherford County.

*State v. William Henry Poole;
Andrew Jackson Sawyer, Victim, Murder*

On the night of January 1, 1943, about 10:30 p.m., as Andrew Sawyer and Marvin Sawyer, both sailors in the Navy, were about to enter the front door of the home of Randall Sawyer in Elizabeth City, someone hidden in the immediate vicinity, shot at them with a shotgun loaded with buckshot. Andrew Sawyer was killed, his brother, Marvin Sawyer, was wounded, and Randall Sawyer, a relative, who had come to the front door to let them in, was also wounded.

Sheriff W. L. Thompson, of Pasquotank County, requested the assistance of the S.B.I. in solving the crime. Sheriff Thompson, Chief of Police Walter W. Spence, of Elizabeth City, Deputy Sheriff John Anderson, City Policeman B. F. Halstead, State Highway Patrolmen and Agents of S.B.I. all joined in an intensive investigation, with the result that W. H. Poole, a 29-year-old Negro, was arrested as the perpetrator of the crime. He confessed to having done the shooting because of a wordy argument he had had with Andrew and Marvin Sawyer earlier during the evening of January 1, 1943. He stated that he did not intend to kill them, but simply to "sting them" with the shot. He was taken to State's Prison in Raleigh for safekeeping and to await trial.

Poole was indicted by the Grand Jury of Pasquotank County on February 15, 1943. He was placed on trial on February 17 and convicted of murder in the first degree and sentenced to death by Judge W. H. S. Burgwyn.

*State v. Ellis Cary, Jr.;
Slack Jewelry Company, Victim
Breaking and Entering*

Chief of Police L. S. Allen, of Rockingham, and Sheriff Carl Holland, of Richmond County, on August 4, 1943, requested the assistance of the S.B.I. in their investigation of a series of breaking and entering cases involving the entry into the Slack Jewelry Company, S.A.L. Ticket Office, the Railway Express Company, all of Rockingham, and the Land's Clothing Company of Hamlet.

On September 8, 1943, the Chief of Police of Hamlet, A. R. Gibson, caught a soldier by the name of Ellis Cary, colored, age 23, in the Land's Clothing Store, Hamlet. Cary was questioned by Chief Gibson, Chief L. S. Allen, of Rockingham, Special Agents J. E. Lucas and C. L. Eacho, of the S.A.L. Railway, and an S.B.I. Agent. As a result, Cary made a complete confession, admitting his entrance not only into the Land's Clothing Store, but also the robbery of the Slack Jewelry Company, the S.A.L. Railway Ticket Office on two occasions, the Express Office at Rockingham, and the theft of an auto belonging to Dr. F. D. Quick.

He was tried in the Richmond County Superior Court October 1943 term of court. Judge W. H. Bobbitt ordered all the above cases against Cary be consolidated. Cary pled guilty and was sentenced to not less than eleven nor more than seventeen years in the State Prison.

*State v. John Edgar Messer, Elmer H. Biggs, Jr., and
William Dalton Biggs;
E. J. Swanson, Victim, Murder*

Mr. E. J. Swanson, a merchant of Jamestown, Guilford County, was shot and killed in his store about 8:30 p.m. on February 19, 1943, by three white men in an attempted robbery.

Sheriff John C. Story, of Guilford County, requested the assistance of the S.B.I. in making his investigation. At the time of the shooting the store was occupied by Mr. and Mrs. Swanson and Mr. O. M. Bunday. As the holdup men ran out of the store, they met Dorris Rae and her sister, Mildred, coming into the store. They made their escape in a waiting automobile. These four were able to give a good description of the criminals.

The Danville, Virginia Police Department arrested three boys, John Edgar Messer, Elmer H. Biggs, Jr., and William Dalton Biggs, for an armed robbery of Barbour's Filling Station at Danville on the night of March 17, 1943. This robbery was committed in a manner similar to the attempted robbery of E. J. Swanson. They confessed to the robbery of Barbour's Filling Station and held for trial.

On March 30, Sheriff Story of Guilford County and two S.B.I. Agents went to Danville and questioned these three boys about the shooting of Mr. Swanson. They would neither admit nor deny having shot Swanson. On March 31, Sheriff Story took Solicitor J. Lee Wilson to Danville to assist his deputies and S.B.I. Agents in questioning the two Biggs boys and J. E. Messer. Sheriff Story and S.B.I. Agents also took to Danville Mr. O. M. Bunday, Mrs. E. J. Swanson, and Dorris and Mildred Rae to see if they could identify the Biggs boys and Messer as the ones that killed Mr. Swanson. A line-up was prepared at the city jail consisting of the three suspects and three other prisoners; six in all. Mr. Bunday positively identified John Messer as the man that actually shot Swanson, and William Dalton Biggs as being in Swanson's store at the time of the shooting. Mrs. Swanson made identically the same identification as Mr. Bunday. Miss Dorris Rae identified Elmer H. Biggs, Jr., as the man she had seen sitting in a Ford coach parked in front of Swanson's store the night of the shooting. She also identified William Dalton Biggs as one of the two men she saw running out of Swanson's store, but she could not identify the man who ran out with him. Mildred Rae identified John Messer and William Dalton Biggs as the two men she saw running out of Swanson's store and get into a car where another man, she could not identify, was waiting.

Following these identifications, the two Biggs boys requested and were permitted to confer together privately, after which they both confessed their part in the death of Mr. Swanson. They then asked

to talk privately with John Messer. This was also granted, and as a result, Messer confessed that he shot E. J. Swanson twice.

The Danville, Virginia Police Department released them to Sheriff Story, and they were brought to Greensboro on a first degree murder charge.

They were tried at the May 1943, term of Guilford County Superior Court, and each of them were found guilty of murder in the first degree and sentenced by Judge Burgwyn to death in the gas chamber. All three appealed to the State Supreme Court and were granted a new trial by a four to three vote.

They were again tried at the April 1944, term of Guilford County Superior Court before a jury of Randolph County residents, were again convicted of first degree murder and sentenced by Judge F. Donald Phillips, presiding, to die in the gas chamber.

*State v. Clyde Claybrook and Earl Knight;
Jack Tolbert, Victim, Suspicious Death*

On July 3, 1943, Highway Patrolman J. H. Jackson requested assistance of the S.B.I. in order to determine whether or not Jack Tolbert, who was found in an unconscious condition on highway No. 220, about two and one-half miles south of Stoneville, Rockingham County, had been the victim of a hit and run driver or had been assaulted and left on the highway. Patrolman Jackson stated that he was called to the scene at about 3 a.m., July 3, and that Tolbert was still alive when he arrived, but died about 7:30 a.m. the same morning.

Jackson and two S.B.I. Agents immediately proceeded to make a thorough investigation. As a result of this investigation, it was determined that Tolbert met his death as a result of being run over by an automobile driven by Clyde Claybrook and occupied by Earl Knight and Virginia Atkins.

Claybrook and Knight were indicted for hit and run and manslaughter, tried in Rockingham County Superior Court at December 1943, term of Court, convicted, and were sentenced by Judge Hoyle Sink to serve a term of fourteen months on the roads.

CRIMINAL STATISTICS

REPORT OF

THE DIVISION OF CRIMINAL AND CIVIL STATISTICS

As is customary, the current report of the Division of Criminal and Civil Statistics presents a general summarization of all criminal cases reported by the clerks of the Superior Court and of the various courts of record below the Superior Court, as required by Chapter 315 of the Public Laws of 1939.

Heretofore, this biennial report has covered a two year period, ending on June 30 next preceding the issuance of the report, but as a matter of convenience in the keeping of the departmental records and the preparation of the report in time for submission to the Governor and the General Assembly, it has been deemed advisable to submit this and subsequent reports on a calendar year basis. With this in view, the current report will be found to cover the eighteen month period beginning July 1, 1942, and ending January 1, 1944. This change to a calendar year basis has long seemed desirable and the present unsettled condition of the court dockets presents an opportunity to effect this change with a minimum of inconvenience.

The criminal cases tabulated in this report total 160,445 for the eighteen month period covered, 16,945 of these cases having been disposed of in the Superior Court, and 143,500 in the various courts of record below the Superior Court.

There has been a considerable falling off in the number of criminal cases disposed of in the Superior Court in this eighteen-month period, as compared with figures for a like period in the preceding biennium. This, we think, is due in large part to the abnormal times and should not be considered except in that light.

As to the criminal cases reported from the courts below the Superior Court, the total of 143,500 for the eighteen month period ending January 1, 1944, represents an increase over comparable figures in the Attorney General's Report for the preceding biennium, but this reflects not so much an increase in cases tried as an increase in cases reported and these figures, in turn, should be considered with this in mind.

The statute (Chapter 315, Public Laws of 1939) requires of this department the collection and correlation of information in civil as well as criminal law administration throughout the State, and detailed statistics relating to civil litigations in the Superior Court have been furnished this division by the clerks of the Superior Court in accordance with the statutory requirements and are now in our files. However, the unavailability of litigants, witnesses and counsel during war time has resulted in such disruption of the civil calendars, in particular, as to make any current analysis of these civil statistics practically worthless. While the figures for the period covered by this report

have not lost their value as permanent records, there would seem to be no point in giving them separate treatment at this time.

All of the information collected and compiled by the Division of Criminal and Civil Statistics is a matter of public record and its value is cumulative. The division has from time to time worked with the Commission on Judicial Districts and this Commission's reports to the Governor and recommendations to the General Assembly have been based in large part on data furnished by this office. It is our hope that as the work of this division is extended and perfected, we will be able to present an increasingly accurate and complete picture of the administrative functioning of our courts and provide for the General Assembly a dependable source of definite information, in the event any readjustment of the judicial or solicitorial districts is undertaken.

FIRST JUDICIAL DISTRICT **IN SUPERIOR COURT**

JULY 1, 1942-JANUARY 1, 1944

Offense	CONVICTIONS								OTHER DISPOSITIONS							
	White		Negro		Indian		Unclassified		White		Negro		Indian		Unclassified	
	M	F	M	F	M	F	M	F	M	F	M	F	M	F	M	F
Assault.....	1		2	1					3	1	2				1	
Assault and battery.....			1						1		3					
Assault with deadly weapon.....	6	2	11						2		6				1	
Assault on female.....	2		5													
Assault with intent to kill.....	3		6						2							
Assault with intent to rape.....									4		2					
Assault—secret.....																
Drunk—drunk and disorderly.....	9	1	4						8		2					
Possession—illegal whiskey.....															2	
Possession for sale—sale.....	2										1					
Manufacturing—possession of material for.....																
Transportation.....																
Violation liquor laws.....	2								6		1					
Driving Drunk.....	17		7						24		3				3	
Reckless driving.....	3		1						6		3					
Hit and run.....											3					
Speeding.....															1	
Auto license violations.....	1									1						
Violation motor vehicle laws.....	1		1						2		1					
Breaking and entering.....	1		5								2					
And larceny.....	3		14								3					
And receiving.....	11		6													
Housebreaking.....			7								1					
And larceny.....																
And receiving.....																
Storebreaking.....			1													
And larceny.....																
And receiving.....																
Larceny.....	14		29						4		8	1				
Larceny and receiving.....	1		4						2	1	3					
Larceny from the person.....			1													
Larceny by trick and device.....									1							
Larceny of automobile.....																
Temporary larceny.....																
Murder—first degree.....			1						1		1					
Murder—second degree.....	1		3	1												
Manslaughter.....			3						4		4					
Burglary—first degree.....			1													
Burglary—second degree.....			3													
Abandonment.....	1								1							
Abduction.....																
Affray.....																
Arson.....																
Bigamy.....			3								1					
Bribery.....																
Burning other than arson.....				1												
Carrying concealed weapon.....	2		1						1							

FIRST JUDICIAL DISTRICT—Continued

Offense	JULY 1, 1942-JANUARY 1, 1944															
	CONVICTIONS								OTHER DISPOSITIONS							
	White		Negro		Indian		Unclas- sified		White		Negro		Indian		Unclas- sified	
	M	F	M	F	M	F	M	F	M	F	M	F	M	F	M	F
Contempt.....	1															
Conspiracy.....																
Cruelty to animals.....	1															
Disorderly conduct.....	4	1	1						2							
Disorderly House.....									1							
Disposing of mortgaged property.....																
Disturbing religious worship.....																
Violation of election laws.....																
Embezzlement.....	3															
Escape.....																
Failure to list tax.....											1					
Food and drug laws.....																
Fish and game laws.....																
Forcible trespass.....																
Forgery.....			3								4					
Fornication and adultery.....	2	1							1	1						
Gaming and lottery laws.....											1					
Health laws.....									1							
Incest.....																
Injury to property.....									1							
Municipal ordinances.....																
Non-support.....	3								2							
Non-support of illegitimate child.....			1													
Nuisance.....	1															
Official misconduct.....																
Perjury.....									1							
Prostitution.....		1							1							
Rape.....			2								1					
Receiving stolen goods.....			6								1					
Removing crop.....																
Resisting Officer.....	2		4													
Robbery.....	2		3													
Seduction.....																
Slander.....																
Trespass.....	3						1		1		2					
Vagrancy.....			1													
Worthless check.....																
False pretense.....									1							
Carnal knowledge, etc.....	1										2					
Crime against nature.....																
Slot Machine laws.....																
Kidnaping.....																
Revenue act violations.....																
Miscellaneous.....	2	1	5	1					12		5					
Totals.....	106	7	146	4			1		96	4	65	3			8	

Convictions..... 264

Not-pros..... 94

Acquittals..... 69

Other dispositions..... 1

Total..... 440

SECOND JUDICIAL DISTRICT IN SUPERIOR COURT

Offense	JULY 1, 1942-JANUARY 1, 1944															
	CONVICTIONS								OTHER DISPOSITIONS							
	White		Negro		Indian		Unclassified		White		Negro		Indian		Unclassified	
	M	F	M	F	M	F	M	F	M	F	M	F	M	F	M	F
Assault.....	9		7	1					7	10	1				1	
Assault and battery.....																
Assault with deadly weapon.....	5	1	20	3					10		22	3			3	
Assault on female.....	3		4						4		6				1	
Assault with intent to kill.....	6		5						3		6					
Assault with intent to rape.....			5				1		2		2					
Assault—secret.....	2		2						1		2				2	
Drunk—drunk and disorderly.....	45	1	7	1			1		26	1	7	1				
Possession—illegal whiskey.....	1								1		2					
Possession for sale—sale.....																
Manufacturing—possession of material for.....																
Transportation.....											1					
Violation liquor laws.....	5								3	1	4	1				
Driving drunk.....	6		5						10		6				1	
Reckless driving.....	6		4						10		4				2	
Hit and run.....	2		1						1		2					
Speeding.....	1								4							
Auto license violations.....																
Violation motor vehicle laws.....	11		2						3						3	
Breaking and entering.....			2				1		1		2		1		1	
And larceny.....											3				3	
And receiving.....			5								1					
Housebreaking.....			2								1					
And larceny.....	13		23						3		14				1	
And receiving.....	1		2								2					
Storebreaking.....																
And larceny.....																
And receiving.....																
Larceny.....	9		38						8		17				3	
Larceny and receiving.....	5		8						4		4					
Larceny from the person.....	4		3	1					1		8					
Larceny by trick and device.....																
Larceny of automobile.....			2													
Temporary larceny.....																
Murder—first degree.....			1								3					
Murder—second degree.....	1		6													
Manslaughter.....	2		6						4	1						
Burgary—first degree.....											1					
Burglary—second degree.....			1													
Abandonment.....									3		1				1	
Abduction.....																
Affray.....			3						4		3	1				
Arson.....			1								1	1			1	
Bigamy.....			1						1		1				1	
Bribery.....			1													
Burning other than arson.....							1								1	
Carrying concealed weapon.....	2		1						3		1				2	

SECOND JUDICIAL DISTRICT—Continued

Offense	JULY 1, 1942-JANUARY 1, 1944															
	CONVICTIONS								OTHER DISPOSITIONS							
	White		Negro		Indian		Unclassified		White		Negro		Indian		Unclassified	
	M	F	M	F	M	F	M	F	M	F	M	F	M	F	M	F
Contempt.....																
Conspiracy.....																
Cruelty to animals.....	1								1		1					
Disorderly conduct.....	3		2						5	1	5	1				
Disorderly house.....	1	2							1							
Disposing of mortgaged property.....																
Disturbing religious worship.....																
Violation of election laws.....																
Embezzlement.....	4								2						2	
Escape.....	1								1							
Failure to list tax.....	1															
Food and drug laws.....																
Fish and Game laws.....																
Forcible trespass.....	4		3													
Forgery.....	4		3						5		2					
Fornication and adultery.....				2					1						1	1
Gaming and lottery laws.....			1								2					
Health laws.....									1							
Incest.....	1															
Injury to property.....	1		2				1		1		3					
Municipal ordinances.....			1						4		1					
Non-support.....	4		1						6		2				3	
Non-support of illegitimate child.....	1		2								2					
Nuisance.....																
Official misconduct.....																
Perjury.....											1					
Prostitution.....	1	10					1		3	11	1					
Rape.....									3		4					
Receiving stolen goods.....			2	1					2		1					
Removing crop.....																
Resisting Officer.....	2		2	1					2		1					
Robbery.....	2		8						2		3					
Seduction.....			1								1					
Slander.....																
Trespass.....			1								1	1				
Vagrancy.....		2	2						3	5						
Worthless Check.....	2		1								3				4	
False pretense.....	1								3		3	1				
Carnal knowledge, etc.....	1		1								1					
Crime against nature.....			1												1	
Slot machine laws.....															4	
Kidnaping.....																
Revenue act violations.....																
Miscellaneous.....	1	1							4		8				1	
Totals.....	175	17	202	10			6		167	19	184	11			40	1

Convictions..... 410

Nol-pros..... 318

Acquittals..... 81

Other dispositions..... 23

Total..... 832

JULY 1, 1942-JANUARY 1, 1944																
Offense	CONVICTIONS								OTHER DISPOSITIONS							
	White		Negro		Indian		Unclassified		White		Negro		Indian		Unclassified	
	M	F	M	F	M	F	M	F	M	F	M	F	M	F	M	F
Assault.....	7		7						3		6					
Assault and battery.....																
Assault with deadly weapon.....	8	1	14	2							5					
Assault on female.....	8		8						2		1					
Assault with intent to kill.....			7						5							
Assault with intent to rape.....	1		4						1							
Assault—secret.....																
Drunk—drunk and disorderly.....	8	2							1							
Possession—illegal whiskey.....											1					
Possession for sale—sale.....	1		3								4	1				
Manufacturing—possession of material for.....																
Transportation.....																
Violation liquor laws.....	3															
Driving drunk.....	7		1						1							
Reckless driving.....	3		2								2					
Hit and run.....	2		3													
Speeding.....	1								1							
Auto license violations.....																
Violation motor vehicle laws.....																
Breaking and entering.....	18		12						6		4					
And larceny.....	18		9						8		3					
And receiving.....	5		19				1				3					
Housebreaking.....																
And larceny.....																
And receiving.....																
Storebreaking.....																
And larceny.....																
And receiving.....																
Larceny.....	13		12	1					3		2				1	
Larceny and receiving.....	3															
Larceny from the person.....	4		10	3					1		4					
Larceny by trick and device.....	1		1													
Larceny of automobile.....			2													
Temporary larceny.....																
Murder—first degree.....			3								2					
Murder—second degree.....	4	1	2													
Manslaughter.....	5		11	1					4		6					
Burglary—first degree.....									3		1					
Burglary—second degree.....			1													
Abandonment.....									1		1					
Abduction.....									1		1					
Affray.....											1					
Arson.....																
Bigamy.....	3															
Bribery.....									2		1					
Burning other than arson.....	2															
Carrying concealed weapon.....			2													

THIRD JUDICIAL DISTRICT—Continued

Offense	JULY 1, 1942-JANUARY 1, 1944															
	CONVICTIONS								OTHER DISPOSITIONS							
	White		Negro		Indian		Unclassified		White		Negro		Indian		Unclassified	
	M	F	M	F	M	F	M	F	M	F	M	F	M	F	M	F
Contempt.....																
Conspiracy.....			3						5							
Cruelty to animals.....																
Disorderly conduct.....	2	1														
Disorderly house.....																
Disposing of mortgaged property.....									1							
Disturbing religious worship.....										1						
Violation of election laws.....																
Embezzlement.....																
Escape.....		1														
Failure to list tax.....																
Food and drug laws.....																
Fish and Game laws.....																
Forceful trespass.....	2		7													
Forgery.....	4		5							1						
Fornication and adultery.....			1	1												
Gaming and lottery laws.....			1													
Health laws.....			1	1							1					
Incest.....			1													
Injury to property.....	1		1							1						
Municipal ordinances.....	1															
Non-support.....	1		2						4		2					
Non-support of illegitimate child.....	1		1													
Nuisance.....																
Official misconduct.....																
Perjury.....	2		3	1					1		1					
Prostitution.....	3															
Rape.....			1													
Receiving stolen goods.....	1										1					
Removing crop.....			1							1						
Resisting Officer.....	1								1		1					
Robbery.....	2		5													
Seduction.....			3							1						
Slander.....																
Trespass.....	1									1						
Vagrancy.....		1														
Worthless Check.....																
False pretense.....	1								2						1	
Carnal knowledge, etc.....			6								2					
Crime against nature.....	1								1							
Slot machine laws.....																
Kidnaping.....									1							
Revenue act violations.....																
Miscellaneous.....	2									1	1					
Totals.....	151	7	175	10			1		59	1	61	3			2	

Convictions..... 344
 Nol-pros..... 72
 Acquittals..... 27

Other dispositions..... 27
 Total..... 470

FOURTH JUDICIAL DISTRICT IN SUPERIOR COURT

Offense	JULY 1, 1942-JANUARY 1, 1944															
	CONVICTIONS								OTHER DISPOSITIONS							
	White		Negro		Indian		Unclassified		White		Negro		Indian		Unclassified	
	M	F	M	F	M	F	M	F	M	F	M	F	M	F	M	F
Assault.....	5	1	13	2					4		6					
Assault and battery.....																
Assault with deadly weapon.....	17		24						3	3	1	2				
Assault on female.....	6		6						1							
Assault with intent to kill.....	8		4	1					2	1	3					
Assault with intent to rape.....	2		4						2							
Assault—secret.....	1			1							1	1				
Drunk—drunk and disorderly.....	1		2													
Possession—illegal whiskey.....			2													
Possession for sale—sale.....			1								3	4				
Manufacturing—possession of material for.....																
Transportation.....	1		2													
Violation liquor laws.....	8		10	2			2		3		3					
Driving drunk.....	23		5				2		4							
Reckless driving.....	6		2						4		2					
Hit and run.....			1						1							
Speeding.....			2													
Auto license violations.....			1													
Violation motor vehicle laws.....	1								5							
Breaking and entering.....	10		8								2					
And larceny.....	12		13						1		1					
And receiving.....																
Housebreaking.....			1								1					
And larceny.....	21		20	1					6		4	1			2	
And receiving.....			2								1					
Storebreaking.....																
And larceny.....																
And receiving.....																
Larceny.....	34	1	33	6			1		16		9				2	
Larceny and receiving.....	1		4	2					2							
Larceny from the person.....	1		1						1		2					
Larceny by trick and device.....																
Larceny of automobile.....	9		4						1		1					
Temporary larceny.....	2															
Murder—first degree.....	2		1						3		3	2				
Murder—second degree.....		1	6	2												
Manslaughter.....	6		9						3		1					
Burglary—first degree.....											3					
Burglary—second degree.....			5						1							
Abandonment.....	4		1													
Abduction.....	2	1														
Affray.....																
Arson.....			1													
Bigamy.....	5	1	1	1												
Bribery.....			1													
Burning other than arson.....	2															
Carrying concealed weapon.....	1										2					

FOURTH JUDICIAL DISTRICT—Continued

Offense	JULY 1, 1942-JANUARY 1, 1944															
	CONVICTIONS								OTHER DISPOSITIONS							
	White		Negro		Indian		Unclas- sified		White		Negro		Indian		Unclas- sified	
	M	F	M	F	M	F	M	F	M	F	M	F	M	F	M	F
Contempt.....																
Conspiracy.....	4															
Cruelty to animals.....	2															
Disorderly conduct.....			1	1					1							
Disorderly house.....	1										1					
Disposing of mortgaged property.....															1	
Disturbing religious worship.....																
Violation of election laws.....																
Embezzlement.....	1		5						1				1			
Escape.....									1							
Failure to list tax.....									1							
Food and drug laws.....									1							
Fish and Game laws.....									1							
Forcible trespass.....	7		3								1					
Forgery.....	14	1	21				1		1		2				4	
Fornication and adultery.....	2	2	1	1					1	2						
Gaming and lottery laws.....			2													
Health laws.....	4		6												6	
Incest.....																
Injury to property.....	1		1						1	1						
Municipal ordinances.....	1															
Non-support.....	3		4								1					
Non-support of illegitimate child.....	5								2							
Nuisance.....		1									2					
Official misconduct.....																
Perjury.....									4							
Prostitution.....			2	1							1	1				
Rape.....			1													
Receiving stolen goods.....			4						1		1	2				
Removing crop.....									2							
Resisting Officer.....			3	3											1	
Robbery.....	6	1	14						2		2					
Seduction.....									2							
Slander.....																
Trespass.....	1										2				2	
Vagrancy.....			2													
Worthless Check.....	3											1				
False pretense.....	2		8								1	1			1	
Carnal knowledge, etc.....	1		2													
Crime against nature.....			1													
Slot machine laws.....																
Kidnaping.....																
Revenue act violations.....																
Miscellaneous.....	3		2						2		3	2				
Totals.....	252	10	274	24			6		86	5	67	18	1		19	

Convictions..... 566
 Nol-pros..... 125
 Acquittals..... 49

Other dispositions..... 22
 Total..... 762

FIFTH JUDICIAL DISTRICT
IN SUPERIOR COURT

JULY 1, 1942-JANUARY 1, 1944																
Offense	CONVICTIONS								OTHER DISPOSITIONS							
	White		Negro		Indian		Unclassified		White		Negro		Indian		Unclassified	
	M	F	M	F	M	F	M	F	M	F	M	F	M	F	M	F
Assault.....	9		1													
Assault and battery.....																
Assault with deadly weapon.....	17		42	3					6	2	7	3				
Assault on female.....	3		10						5		3					
Assault with intent to kill.....			11								1					
Assault with intent to rape.....			2													
Assault—secret.....	1		1													
Drunk—drunk and disorderly.....	4										1					
Possession—illegal whiskey.....			2													
Possession for sale—sale.....		1	3													
Manufacturing—possession of material for.....																
Transportation.....		1							1							
Violation liquor laws.....	6	1	8						2		1					
Driving drunk.....	26		9						11		2					
Reckless driving.....	5		4						4							
Hit and run.....		1														
Speeding.....																
Auto license violations.....	2															
Violation motor vehicle laws.....																
Breaking and entering.....	12	1	21						3		2					
And larceny.....	1		1						1		2					
And receiving.....																
Housebreaking.....																
And larceny.....																
And receiving.....																
Storebreaking.....																
And larceny.....																
And receiving.....																
Larceny.....	15	1	3	4					5		12	1				
Larceny and receiving.....																
Larceny from the person.....																
Larceny by trick and device.....																
Larceny of automobile.....			4													
Temporary larceny.....	4		2													
Murder—first degree.....		1							1		4	1				
Murder—second degree.....	2		7	2												
Manslaughter.....	3		4	1					5							
Burglary—first degree.....									4							
Burglary—second degree.....	2															
Abandonment.....	2															
Abduction.....																
Affray.....	1															
Arson.....									1							
Bigamy.....	1								2							
Bribery.....																
Burning other than arson.....																
Carrying concealed weapon.....	1		9													

FIFTH JUDICIAL DISTRICT—Continued

JULY 1, 1942-JANUARY 1, 1944

Offense	CONVICTIONS								OTHER DISPOSITIONS							
	White		Negro		Indian		Unclas- sified		White		Negro		Indian		Unclas- sified	
	M	F	M	F	M	F	M	F	M	F	M	F	M	F	M	F
Contempt.....																
Conspiracy.....																
Cruelty to animals.....																
Disorderly conduct.....			2													
Disorderly house.....																
Disposing of mortgaged property.....																
Disturbing religious worship.....																
Violation of election laws.....																
Embezzlement.....	1								1		1					
Escape.....			1													
Failure to list tax.....																
Food and drug laws.....																
Fish and Game laws.....	1															
Forcible trespass.....	4		1						1							
Forgery.....			9													
Fornication and adultery.....	1	5	2		1				1	1	1					
Gaming and lottery laws.....	1								1							
Health laws.....																
Incest.....			1													
Injury to property.....	2										1					
Municipal ordinances.....																
Non-support.....	5		2								3					
Non-support of illegitimate child.....	1		6						2		2					
Nuisance.....	3	3		3					3	1	3					
Official misconduct.....																
Perjury.....																
Prostitution.....	1	2							1							
Rape.....			1								1					
Receiving stolen goods.....																
Removing crop.....																
Resisting Officer.....	3		1	1							2					
Robbery.....	2		19													
Seduction.....									1		1					
Slander.....																
Trespass.....	2	1	1						2	1	1					
Vagrancy.....									1							
Worthless Check.....	16															
False pretense.....									2		1					
Carnal knowledge, etc.....																
Crime against nature.....	2		2								1					
Slot machine laws.....																
Kidnaping.....											1					
Revenue act violations.....																
Miscellaneous.....	1						1		4		3					
Totals.....	163	16	226	15			1		69	7	57	5				

Convictions..... 421

Nol-pros..... 97

Acquittals..... 29

Other dispositions..... 12

Total..... 559

**SIXTH JUDICIAL DISTRICT
IN SUPERIOR COURT**

JULY 1, 1942-JANUARY 1, 1944																
Offense	CONVICTIONS								OTHER DISPOSITIONS							
	White		Negro		Indian		Unclassified		White		Negro		Indian		Unclassified	
	M	F	M	F	M	F	M	F	M	F	M	F	M	F	M	F
Assault.....	3		6						2							
Assault and battery.....																
Assault with deadly weapon.....	11		16	5					5	1	10	1				
Assault on female.....	2		6						1							
Assault with intent to kill.....	4		9						3		2					
Assault with intent to rape.....									2		1					
Assault—secret.....																
Drunk—drunk and disorderly.....	1		5						1		2					
Possession—illegal whiskey.....			1													
Possession for sale—sale.....	2		4	1					3	1	5					
Manufacturing—possession of material for.....	2								1		5					
Transportation.....			4	1							2					
Violation liquor laws.....																
Driving drunk.....	13	1	4						9		1					
Reckless driving.....	6		4						8		1					
Hit and run.....	3		1				1		1							
Speeding.....																
Auto license violations.....									1							
Violation motor vehicle laws.....			1													
Breaking and entering.....	3		5						1		4					
And larceny.....	3		12						2		7					
And receiving.....			1													
Housebreaking.....																
And larceny.....																
And receiving.....																
Storebreaking.....			1													
And larceny.....											1					
And receiving.....																
Larceny.....	15	1	24						8		8				2	
Larceny and receiving.....			12						3		2	1				
Larceny from the person.....	4	1	1						1	1	1					
Larceny by trick and device.....	1								1							
Larceny of automobile.....	5		1		2				1		1					
Temporary larceny.....	2															
Murder—first degree.....			1						3		3					
Murder—second degree.....	2		4								1					
Manslaughter.....	7		10	2					5		3					
Burglary—first degree.....	3		1								1		1			
Burglary—second degree.....	1															
Abandonment.....	1		1						3		2				1	
Abduction.....																
Affray.....																
Arson.....																
Bigamy.....	2	1	1						2							
Bribery.....									1							
Burning other than arson.....									2							
Carrying concealed weapon.....	2		4													

SIXTH JUDICIAL DISTRICT—Continued

Offense	JULY 1, 1942-JANUARY 1, 1944															
	CONVICTIONS								OTHER DISPOSITIONS							
	White		Negro		Indian		Unclassified		White		Negro		Indian		Unclassified	
	M	F	M	F	M	F	M	F	M	F	M	F	M	F	M	F
Contempt.....																
Conspiracy.....			2													
Cruelty to animals.....									1							
Disorderly conduct.....	1															
Disorderly house.....									1							
Disposing of mortgaged property.....																
Disturbing religious worship.....									1							
Violation of election laws.....																
Embezzlement.....	3								2							
Escape.....																
Failure to list tax.....																
Food and drug laws.....																
Fish and Game laws.....																
Forcible trespass.....	1		2						1							
Forgery.....	16		1						1							
Fornication and adultery.....	1	1														
Gaming and lottery laws.....																
Health laws.....																
Incest.....	1															
Injury to property.....									2							
Municipal ordinances.....									2							
Non-support.....	2		2						3		2				1	
Non-support of illegitimate child.....			3													
Nuisance.....	1															
Official misconduct.....																
Perjury.....			1								1	1				
Prostitution.....									2	1						
Rape.....	1		2													
Receiving stolen goods.....			1													
Removing crop.....									1							
Resisting Officer.....	1								2							
Robbery.....	3		12	2							1					
Seduction.....			1						1		1					
Slander.....																
Trespass.....			1													
Vagrancy.....		1									2					
Worthless Check.....	1								1		1					
False pretense.....			1						4		2				1	
Carnal knowledge, etc.....	2		2						2		1					
Crime against nature.....	2															
Slot machine laws.....																
Kidnaping.....									2							
Revenue act violations.....																
Miscellaneous.....	1		3						5	1	2	1				
Totals.....	135	6	174	11	2		1		104	5	74	5	2		5	

Convictions..... 329
 Nol-pros..... 104
 Acquittals..... 69

Other dispositions..... 22
 Total..... 524

[illegible]

SEVENTH JUDICIAL DISTRICT—Continued

Offense	JULY 1, 1942-JANUARY 1, 1944															
	CONVICTIONS								OTHER DISPOSITIONS							
	White		Negro		Indian		Unclas- sified		White		Negro		Indian		Unclas- sified	
	M	F	M	F	M	F	M	F	M	F	M	F	M	F	M	F
Contempt.....																
Conspiracy.....																
Cruelty to animals.....																
Disorderly conduct.....	1		2						1							
Disorderly house.....																
Disposing of mortgaged property.....																
Disturbing religious worship.....			1													
Violation of election laws.....																
Embezzlement.....	2															
Escape.....			1								1					
Failure to list tax.....	1															
Food and drug laws.....																
Fish and Game laws.....																
Forcible trespass.....	4															
Forgery.....	23		3	4			1		2						3	
Fornication and adultery.....			2	1							1					
Gaming and lottery laws.....	10															
Health laws.....																
Incest.....																
Injury to property.....	2															
Municipal ordinances.....			1													
Non-support.....																
Non-support of illegitimate child.....			3				1								1	
Nuisance.....	1		2								1					
Official misconduct.....																
Perjury.....																
Prostitution.....		1														
Rape.....															1	
Receiving stolen goods.....	6		13				1								1	
Removing crop.....	1															
Resisting Officer.....	4		2													
Robbery.....	28		10	1					2		1					
Seduction.....																
Slander.....																
Trespass.....															1	
Vagrancy.....	1		2													
Worthless Check.....	4	1	1													
False pretense.....			1						1		1					
Carnal knowledge, etc.....			1													
Crime against nature.....	1		1						1						1	
Slot machine laws.....																
Kidnaping.....																
Revenue act violations.....																
Miscellaneous.....	1		1				1				1				1	
Totals.....	192	9	228	19	1		8		17	4	20	8			28	6

Convictions..... 457
 Nol-pros..... 81
 Acquittals..... 2

Other dispositions..... 0
 Total..... 540

EIGHTH JUDICIAL DISTRICT **IN SUPERIOR COURT**

Offense	JULY 1, 1942-JANUARY 1, 1944															
	CONVICTIONS								OTHER DISPOSITIONS							
	White		Negro		Indian		Unclassified		White		Negro		Indian		Unclassified	
	M	F	M	F	M	F	M	F	M	F	M	F	M	F	M	F
Assault.....	11		10						9		2					
Assault and battery.....																
Assault with deadly weapon.....	14		38	5			2		4	1	11	2			2	
Assault on female.....	6		7						4		1					
Assault with intent to kill.....	2		3	1							2	1				
Assault with intent to rape.....	1		3				1									
Assault—secret.....			1													
Drunk—drunk and disorderly.....	34		1				1		7	1	1					
Possession—illegal whiskey.....	1		4	1												
Possession for sale—sale.....	2															
Manufacturing—possession of material for.....	1															
Transportation.....	1		1	1												
Violation liquor laws.....	2		1	5					3	1	1					
Driving drunk.....	17	1	7						18		2					
Reckless driving.....	8	1	3				1		4							
Hit and run.....	4								2		1				1	
Speeding.....	2								3		1					
Auto license violations.....			2						2							
Violation motor vehicle laws.....	1															
Breaking and entering.....	6	1	10	1					1		1					
And larceny.....	4		11								2					
And receiving.....	2		5						1		8					
Housebreaking.....									2							
And larceny.....									2							
And receiving.....			1								1					
Storebreaking.....			1								1					
And larceny.....																
And receiving.....	17		20								11					
Larceny.....	21		10	3			1		2	2	2	1				
Larceny and receiving.....	11	1	23	1					2		4				2	
Larceny from the person.....	11		5						1		2					
Larceny by trick and device.....			1													
Larceny of automobile.....	13		7				3		1		1					
Temporary larceny.....			1						1							
Murder—first degree.....			1						2	1	7	2				
Murder—second degree.....	6		8	1			1									
Manslaughter.....	2		20	1			1		2		3					
Burglary—first degree.....											1				1	
Burglary—second degree.....			6													
Abandonment.....	1		2	1					1		1					
Abduction.....									1							
Affray.....	3		1													
Arson.....			2						1		1					
Bigamy.....	2	4	7	1							1	2				
Bribery.....																
Burning other than arson.....									1							
Carrying concealed weapon.....			1						1							

EIGHTH JUDICIAL DISTRICT—Continued

Offense	JULY 1, 1942-JANUARY 1, 1944															
	CONVICTIONS								OTHER DISPOSITIONS							
	White		Negro		Indian		Unclassified		White		Negro		Indian		Unclassified	
	M	F	M	F	M	F	M	F	M	F	M	F	M	F	M	F
Contempt.....																
Conspiracy.....																
Cruelty to animals.....																
Disorderly conduct.....	2		1	2							1	2				
Disorderly house.....	1															
Disposing of mortgaged property.....	1															
Disturbing religious worship.....																
Violation of election laws.....																
Embezzlement.....	2								1		2				1	
Escape.....	3															
Failure to list tax.....																
Food and drug laws.....																
Fish and Game laws.....									1							
Forceful trespass.....	16		16				3									
Forgery.....	8		3	1			1		1		1					
Fornication and adultery.....	1	1	2	1					1	2	2	2			1	
Gaming and lottery laws.....																
Health laws.....																
Incest.....																
Injury to property.....	1		5						1							
Municipal ordinances.....	3								5							
Non-support.....	2		2						5		2					
Non-support of illegitimate child.....			2						1							
Nuisance.....	4															
Official misconduct.....																
Perjury.....																
Prostitution.....	5	10	1	2			1		5	7	1	3				
Rape.....	1		1								1					
Receiving stolen goods.....	2		13	1							4	1	1			
Removing crop.....																
Resisting Officer.....	4								1		1					
Robbery.....	3		14						7		13				2	
Seduction.....																
Slander.....																
Trespass.....	1	1	1						4							
Vagrancy.....	3		2						3	2						
Worthless Check.....	2										2					
False pretense.....									5							
Carnal knowledge, etc.....			1						1		1					
Crime against nature.....	1										1					
Slot machine laws.....																
Kidnaping.....																
Revenue act violations.....																
Miscellaneous.....	4	1							1		1	1			2	
Totals.....	276	21	288	29			16		121	17	100	18	1		12	

Convictions..... 630
 Nol-pros..... 121
 Acquittals..... 127

Other dispositions..... 21
 Total..... 899

NINTH JUDICIAL DISTRICT IN SUPERIOR COURT

Offense	JULY 1, 1942-JANUARY 1, 1944															
	CONVICTIONS								OTHER DISPOSITIONS							
	White		Negro		Indian		Unclassified		White		Negro		Indian		Unclassified	
	M	F	M	F	M	F	M	F	M	F	M	F	M	F	M	F
Assault.....	9	2	9	---	8	---	---	---	5	---	4	1	2	---	1	1
Assault and battery.....	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---
Assault with deadly weapon.....	16	2	22	2	9	1	1	1	10	---	7	---	1	1	1	---
Assault on female.....	6	---	8	---	1	---	1	---	1	---	6	---	---	---	---	---
Assault with intent to kill.....	1	---	8	---	---	---	---	---	4	1	3	---	---	---	---	---
Assault with intent to rape.....	1	---	7	---	3	---	---	---	---	---	---	---	1	---	---	---
Assault—secret.....	---	---	1	---	---	---	---	---	---	---	---	---	---	---	---	---
Drunk—drunk and disorderly.....	8	---	1	1	1	---	---	---	1	2	---	---	1	---	---	---
Possession—illegal whiskey.....	8	---	1	---	---	---	---	---	---	---	---	---	---	---	---	---
Possession for sale—sale.....	---	---	---	---	1	---	---	---	---	---	---	---	---	---	---	---
Manufacturing—possession of material for.....	---	---	3	---	---	---	---	---	---	---	---	---	---	---	---	---
Transportation.....	2	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---
Violation liquor laws.....	2	---	2	1	1	---	---	---	2	---	3	1	---	---	2	1
Driving drunk.....	10	---	6	---	---	---	---	---	6	---	---	---	---	---	---	---
Reckless driving.....	5	1	4	---	1	---	---	---	7	2	3	---	---	---	1	---
Hit and run.....	2	---	6	---	---	---	---	---	1	1	3	---	---	---	---	---
Speeding.....	---	---	---	---	1	---	1	---	1	---	---	---	---	---	---	---
Auto license violations.....	---	1	---	---	---	---	---	---	2	---	---	---	---	---	---	---
Violation motor vehicle laws.....	1	---	---	---	2	---	---	---	1	---	1	---	---	---	1	---
Breaking and entering.....	13	1	16	---	4	---	---	---	1	---	4	---	---	---	---	---
And larceny.....	9	---	18	---	---	---	---	---	2	---	8	---	3	---	2	---
And receiving.....	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---
Housebreaking.....	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---
And larceny.....	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---
And receiving.....	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---
Storebreaking.....	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---
And larceny.....	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---
And receiving.....	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---
Larceny.....	18	1	41	2	3	---	---	---	9	1	12	2	1	---	3	---
Larceny and receiving.....	3	---	1	1	4	---	---	---	2	1	1	---	1	---	2	---
Larceny from the person.....	4	---	1	---	1	---	---	---	1	---	---	---	---	---	---	---
Larceny by trick and device.....	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---
Larceny of automobile.....	7	---	4	---	---	---	---	---	5	---	---	---	---	---	1	---
Temporary larceny.....	1	---	2	---	---	---	---	---	---	---	---	---	---	---	---	---
Murder—first degree.....	---	---	3	---	---	---	1	---	1	---	3	---	---	---	2	1
Murder—second degree.....	5	---	10	---	2	2	---	---	---	---	---	---	---	---	---	---
Manslaughter.....	4	---	18	3	2	---	---	---	5	1	5	---	---	---	2	---
Burglary—first degree.....	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---
Burglary—second degree.....	1	---	1	---	---	---	---	---	---	---	---	---	---	---	---	---
Abandonment.....	3	---	1	---	---	---	---	---	---	---	---	---	---	---	4	---
Abduction.....	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---
Affray.....	---	---	---	---	---	---	---	---	---	---	1	---	---	---	---	---
Arson.....	---	---	3	---	---	---	---	---	1	---	---	---	---	---	---	---
Bigamy.....	6	5	3	1	3	---	---	---	1	1	---	---	---	---	1	---
Bribery.....	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---
Burning other than arson.....	3	---	---	---	---	---	---	---	1	---	---	---	1	---	---	---
Carrying concealed weapon.....	1	---	2	---	1	---	---	---	---	---	1	---	---	---	---	---

NINTH JUDICIAL DISTRICT—Continued

Offense	JULY 1, 1942-JANUARY 1, 1944															
	CONVICTIONS								OTHER DISPOSITIONS							
	White		Negro		Indian		Unclassified		White		Negro		Indian		Unclassified	
	M	F	M	F	M	F	M	F	M	F	M	F	M	F	M	F
Contempt.....			1													
Conspiracy.....	2															
Cruelty to animals.....																
Disorderly conduct.....			1		1				3	1						
Disorderly house.....											1				1	
Disposing of mortgaged property.....	1															
Disturbing religious worship.....																
Violation of election laws.....																
Embezzlement.....		1							3							
Escape.....	1															
Failure to list tax.....																
Food and drug laws.....																
Fish and Game laws.....									4							
Forcible trespass.....	10	1	7	2							1					
Forgery.....	3		6						1			1			1	
Fornication and adultery.....	1	1														
Gaming and lottery laws.....	3		1						3		1					
Health laws.....																
Incest.....			1													
Injury to property.....																
Municipal ordinances.....	1		1													
Non-support.....									1						1	
Non-support of illegitimate child.....			3				1									
Nuisance.....											2					
Official misconduct.....																
Perjury.....	1														1	
Prostitution.....	1	1	1	1		1			4	1	1	1			1	
Rape.....					2				4						1	
Receiving stolen goods.....	2		2	1	2		1		1		3	2				
Removing crop.....				1												
Resisting Officer.....			2		1											
Robbery.....	4		5		6				3		8	2				
Seduction.....									1							
Slander.....																
Trespass.....			1							1						
Vagrancy.....										1						
Worthless Check.....	1				1								1			
False pretense.....	1		2												2	
Carnal knowledge, etc.....	1		2						2		1					
Crime against nature.....	4	1	1						2		1					
Slot machine laws.....																
Kidnaping.....																
Revenue act violations.....																
Miscellaneous.....	4		1	1	1				1		2					1
Totals.....	190	18	240	17	62	4	6	1	101	13	90	10	12	1	31	5

Convictions..... 538
 Not-pros..... 149
 Acquittals..... 83

Other dispositions..... 26
 Total..... 801

TENTH JUDICIAL DISTRICT **IN SUPERIOR COURT**

JULY 1, 1942-JANUARY 1, 1944

JULY 1, 1942-JANUARY 1, 1944																									
Offense	CONVICTIONS												OTHER DISPOSITIONS												
	White		Negro		Indian		Unclas- sified		White		Negro		Indian		Unclas- sified										
	M	F	M	F	M	F	M	F	M	F	M	F	M	F	M	F									
Assault.....	3									1	1														
Assault and battery.....	1	1		1						1		2	2												
Assault with deadly weapon.....	14		29	10						11	2	22	1												
Assault on female.....	8		5				1			4		2													
Assault with intent to kill.....	2		3	1						2		3													
Assault with intent to rape.....			4							4		2													
Assault—secret.....	1		1							1		2													
Drunk—drunk and disorderly.....	15									5		3													
Possession—illegal whiskey.....	5		6	1						4	1	1	2												
Possession for sale—sale.....	3		5	1						3	1	3	3												
Manufacturing—possession of material for.....																									
Transportation.....	1									1		1													
Violation liquor laws.....	2									1															
Driving drunk.....	31	1	7				1			16	1	3													
Reckless driving.....	6		7							14		6													
Hit and run.....	1																								
Speeding.....	2														1										
Auto license violations.....	2	1	1																						
Violation motor vehicle laws.....	2		1									1													
Breaking and entering.....	5		7				1			2		2													
And larceny.....	2		6							2		2													
And receiving.....																									
Housebreaking.....			4									3													
And larceny.....	2		16								1	4													
And receiving.....			1																						
Storebreaking.....			7									1													
And larceny.....	9		20									5													
And receiving.....			12									2													
Larceny.....	27	2	41	4			1			9	4	19	5												
Larceny and receiving.....										2															
Larceny from the person.....			5	1						2			1												
Larceny by trick and device.....																									
Larceny of automobile.....	43		5				1			1															
Temporary larceny.....										2															
Murder—first degree.....			3																						
Murder—second degree.....			3																						
Manslaughter.....	3	1	9	2						3		5			1										
Burglary—first degree.....												1													
Burglary—second degree.....	1		2																						
Abandonment.....	2									3															
Abduction.....																									
Affray.....										1															
Arson.....										1															
Bigamy.....	3		1							2	2														
Bribery.....												1													
Burning other than arson.....																									
Carrying concealed weapon.....	1		1									1	1												

TENTH JUDICIAL DISTRICT—Continued

Offense	JULY 1, 1942-JANUARY 1, 1944															
	CONVICTIONS								OTHER DISPOSITIONS							
	White		Negro		Indian		Unclassified		White		Negro		Indian		Unclassified	
	M	F	M	F	M	F	M	F	M	F	M	F	M	F	M	F
Contempt.....																
Conspiracy.....																
Cruelty to animals.....																
Disorderly conduct.....	1	1	1	1							1	3				
Disorderly house.....	1		2	1							2	2				
Disposing of mortgaged property.....	1								2							
Disturbing religious worship.....			2													
Violation of election laws.....																
Embezzlement.....	5		5								1	2				
Escape.....	1		1						1							
Failure to list tax.....	1								1							
Food and drug laws.....																
Fish and Game laws.....																
Forcible trespass.....	5		3								1					
Forgery.....	32	4	3						2							
Fornication and adultery.....																
Gaming and lottery laws.....	1		1													
Health laws.....				1					1		1	3				
Incest.....																
Injury to property.....	4	1							3	1						
Municipal ordinances.....									1							
Non-support.....	10		1						7		2					
Non-support of illegitimate child.....	1		2						2		4					
Nuisance.....	1	5	1						2	3						
Official misconduct.....									2							
Perjury.....	1								1							
Prostitution.....	1	4	2	2					1	2	1	2				
Rape.....	2		3								4					
Receiving stolen goods.....			4								1					
Removing crop.....																
Resisting Officer.....	3		7	1					1	1	2					
Robbery.....	13	2	26						7	1	12					
Seduction.....									1						1	
Slander.....									3							
Trespass.....			2	1					1		1					
Vagrancy.....		1	3						1		1					
Worthless Check.....	1	1									1					
False pretense.....	1	5	1	2					1		2					
Carnal knowledge, etc.....	3										1					
Crime against nature.....	1		2						1		1					
Slot machine laws.....																
Kidnaping.....																
Revenue act violations.....																
Miscellaneous.....	3	10	2	5					2	9	4	1				
Totals.....	290	40	286	35			5		142	30	140	28			3	

Convictions..... 656
 Not-pros..... 217
 Acquittals..... 116

Other dispositions..... 1
 Total..... 999

ELEVENTH JUDICIAL DISTRICT **IN SUPERIOR COURT**

Offense	JULY 1, 1942-JANUARY 1, 1944															
	CONVICTIONS								OTHER DISPOSITIONS							
	White		Negro		Indian		Unclassified		White		Negro		Indian		Unclassified	
	M	F	M	F	M	F	M	F	M	F	M	F	M	F	M	F
Assault.....	9	1	5													
Assault and battery.....	1		4	1												
Assault with deadly weapon.....	18	2	32	8					1		3				1	
Assault on female.....	9		3													
Assault with intent to kill.....																
Assault with intent to rape.....	1		9								1					
Assault—secret.....																
Drunk—drunk and disorderly.....	5	2	1						2	2	1					
Possession—illegal whiskey.....	3															
Possession for sale—sale.....																
Manufacturing—possession of material for.....	3															
Transportation.....																
Violation liquor laws.....	14	3	20	7					5		6	2				
Driving drunk.....	37	1	4						1							
Reckless driving.....	13		7						3							
Hit and run.....	1		1													
Speeding.....	7															
Auto license violations.....	2								1							
Violation motor vehicle laws.....	4		1						1							
Breaking and entering.....	2		5													
And larceny.....	2															
And receiving.....	2															
Housebreaking.....			6								1					
And larceny.....	2		1													
And receiving.....	13		11	2							1				3	
Storebreaking.....	3		5													
And larceny.....																
And receiving.....	25		39						1							
Larceny.....	40	3	36	9					3		1					
Larceny and receiving.....	1		1													
Larceny from the person.....	4	1	12	1					1		1					
Larceny by trick and device.....	1															
Larceny of automobile.....	2		1							1						
Temporary larceny.....									1							
Murder—first degree.....	1			1					1							
Murder—second degree.....	1		2	1							1					
Manslaughter.....	6	1	2						8							
Burglary—first degree.....			1													
Burglary—second degree.....			4													
Abandonment.....	1	1														
Abduction.....																
Affray.....	3															
Arson.....																
Bigamy.....			1													
Bribery.....																
Burning other than arson.....	3															
Carrying concealed weapon.....	3		1						1							

ELEVENTH JUDICIAL DISTRICT—Continued

Offense	JULY 1, 1942-JANUARY 1, 1944															
	CONVICTIONS								OTHER DISPOSITIONS							
	White		Negro		Indian		Unclas- sified		White		Negro		Indian		Unclas- sified	
	M	F	M	F	M	F	M	F	M	F	M	F	M	F	M	F
Contempt.....	1															
Conspiracy.....																
Cruelty to animals.....																
Disorderly conduct.....																
Disorderly house.....	2		1													
Disposing of mortgaged property.....																
Disturbing religious worship.....																
Violation of election laws.....																
Embezzlement.....	2		5								1					
Escape.....	6															
Failure to list tax.....			1													
Food and drug laws.....																
Fish and Game laws.....																
Forcible trespass.....	2		3													
Forgery.....	14		2						1							
Fornication and adultery.....	2	3	3	2					1	1						
Gaming and lottery laws.....	9		8						1							
Health laws.....			1													
Incest.....																
Injury to property.....	6		1	1												
Municipal ordinances.....	4								1							
Non-support.....	9								1							
Non-support of illegitimate child.....	5		3						1		1					
Nuisance.....	1	1														
Official misconduct.....																
Perjury.....		1									1	1				
Prostitution.....	3	4	5						1	1						
Rape.....									1							
Receiving stolen goods.....	6		11								1					
Removing crop.....																
Resisting Officer.....	1		2								1					
Robbery.....	6		11						1							
Seduction.....			2													
Slander.....																
Trespass.....	2		1													
Vagrancy.....	3	3	3							3	3					
Worthless Check.....	1															
False pretense.....	2															
Carnal knowledge, etc.....																
Crime against nature.....			1													
Slot machine laws.....	2															
Kidnaping.....																
Revenue act violations.....																
Miscellaneous.....	2		2						4		1					
Totals.....	333	27	281	33					43	8	25	3			4	

Convictions..... 674

Nol-pros..... 35

Acquittals..... 37

Other dispositions..... 11

Total..... 757

TWELFTH JUDICIAL DISTRICT
IN SUPERIOR COURT

Offense	JULY 1, 1942-JANUARY 1, 1944															
	CONVICTIONS								OTHER DISPOSITIONS							
	White		Negro		Indian		Unclas- sified		White		Negro		Indian		Unclas- sified	
	M	F	M	F	M	F	M	F	M	F	M	F	M	F	M	F
Assault.....	4	2	2						3							
Assault and battery.....									1							
Assault with deadly weapon.....	12	1	16	7							3					
Assault on female.....	10		9						1		1					
Assault with intent to kill.....	5		9	4					2		2	1				
Assault with intent to rape.....	3		1						2							
Assault—secret.....																
Drunk—drunk and disorderly.....	58	2	10	1					4							
Possession—illegal whiskey.....	1															
Possession for sale—sale.....	1		6	1							2					
Manufacturing—possession of material for.....	1															
Transportation.....																
Violation liquor laws.....	3		4	4					2							
Driving drunk.....	17		3						4							
Reckless driving.....	9		2						6		1				1	
Hit and run.....	2		1						1							
Speeding.....	1								2							
Auto license violations.....	2								1		1					
Violation motor vehicle laws.....	3	1														
Breaking and entering.....	16		12								2					
And larceny.....	17		10						2							
And receiving.....	58		37	1			1		2	1	5					
Housebreaking.....																
And larceny.....																
And receiving.....																
Storebreaking.....																
And larceny.....																
And receiving.....																
Larceny.....	10		21	3					4		3	1				
Larceny and receiving.....	24	1	27	3					3	2	4				1	1
Larceny from the person.....	10		9	4					3		2	3				
Larceny by trick and device.....																
Larceny of automobile.....	10		14						5							
Temporary larceny.....	1		1													
Murder—first degree.....				2					2		2					
Murder—second degree.....	2		4						1		1					
Manslaughter.....	2		3	2					5							
Burglary—first degree.....																
Burglary—second degree.....	7															
Abandonment.....	5		2						3	1						
Abduction.....																
Affray.....	2		1	1					2			1				
Arson.....																
Bigamy.....	6	1	1	1											1	
Bribery.....																
Burning other than arson.....	1															
Carrying concealed weapon.....	3		3								2					

TWELFTH JUDICIAL DISTRICT—Continued

Offense	JULY 1, 1942-JANUARY 1, 1914															
	CONVICTIONS								OTHER DISPOSITIONS							
	White		Negro		Indian		Unclassified		White		Negro		Indian		Unclassified	
	M	F	M	F	M	F	M	F	M	F	M	F	M	F	M	F
Contempt.....	1															
Conspiracy.....																
Cruelty to animals.....																
Disorderly conduct.....			4	3					2		1					
Disorderly house.....			1								1					
Disposing of mortgaged property.....	1		1						1							
Disturbing religious worship.....																
Violation of election laws.....																
Embezzlement.....	8		1						2							
Escape.....	2															
Failure to list tax.....																
Food and drug laws.....																
Fish and Game laws.....																
Forcible trespass.....	16		6	4			4	1								
Forgery.....	34	3	24	1				1		2						
Fornication and adultery.....	3	1	1													
Gaming and lottery laws.....	10		6	3				2			1					
Health laws.....																
Incest.....	1							1								
Injury to property.....	4										1					
Municipal ordinances.....																
Non-support.....	7		1					1	1	1						
Non-support of illegitimate child.....	4		2								2					
Nuisance.....																
Official misconduct.....								2								
Perjury.....	1		1								1					
Prostitution.....	6	9						1	5	1					1	1
Rape.....								2								
Receiving stolen goods.....	8		2	6				1		1						
Removing crop.....																
Resisting Officer.....	3		2					1								
Robbery.....	11		3	2				1		3						
Seduction.....			2													
Slander.....																
Trespass.....	5		1								1					
Vagrancy.....		2	3	1				3	2	3						
Worthless Check.....	30															
False pretense.....	5		1					2		1						
Carnal knowledge, etc.....	3							1								
Crime against nature.....																
Slot machine laws.....																
Kidnaping.....																
Revenue act violations.....																
Miscellaneous.....	5		2	3				6	1	1					1	
Totals.....	474	23	271	58			1	4	92	13	51	7			5	3

Convictions..... 831
 Nol-pros..... 55
 Acquittals..... 90

Other dispositions..... 26
 Total..... 1,092

THIRTEENTH JUDICIAL DISTRICT IN SUPERIOR COURT

Offense	JULY 1, 1942-JANUARY 1, 1944															
	CONVICTIONS								OTHER DISPOSITIONS							
	White		Negro		Indian		Unclassified		White		Negro		Indian		Unclassified	
	M	F	M	F	M	F	M	F	M	F	M	F	M	F	M	F
Assault.....	2		4				1				1					
Assault and battery.....	1															
Assault with deadly weapon.....	13		7		1				10		5					
Assault on female.....	4		2						1		4					
Assault with intent to kill.....	1		5	3					2		1	1				
Assault with intent to rape.....	1		1						2		1					
Assault—secret.....											1	1				
Drunk—drunk and disorderly.....	7	1	2						1		1					
Possession—illegal whiskey.....																
Possession for sale—sale.....	1	1	6						2							
Manufacturing—possession of material for.....									1							
Transportation.....	1								2	1						
Violation liquor laws.....	4		2				1				2					
Driving drunk.....	6		9						6		1					
Reckless driving.....	1		2						6	1	1					
Hit and run.....	2		2													
Speeding.....	1								1							
Auto license violations.....			2													
Violation motor vehicle laws.....	4		1						7		1					
Breaking and entering.....	3	1	8						1		6	1				
And larceny.....	12		7		1						1					
And receiving.....	18		11						3		5					
Housebreaking.....																
And larceny.....																
And receiving.....																
Storebreaking.....																
And larceny.....																
And receiving.....																
Larceny.....	7	1	8	3	1				2	1	6	1	1		1	
Larceny and receiving.....	6	1	11						1		2					
Larceny from the person.....			3						1		1					
Larceny by trick and device.....											1					
Larceny of automobile.....	6										2					
Temporary larceny.....	1															
Murder—first degree.....	1								4	2	1					
Murder—second degree.....	6	1	13	4												
Manslaughter.....	3		8	1					4		2	1				
Burglary—first degree.....																
Burglary—second degree.....																
Abandonment.....			1						2							
Abduction.....																
Affray.....			1						1							
Arson.....			1													
Bigamy.....		1	2													
Bribery.....																
Burning other than arson.....									2							
Carrying concealed weapon.....	1		1						1							

THIRTEENTH JUDICIAL DISTRICT—Continued

Offense	JULY 1, 1942-JANUARY 1, 1944															
	CONVICTIONS								OTHER DISPOSITIONS							
	White		Negro		Indian		Unclassified		White		Negro		Indian		Unclassified	
	M	F	M	F	M	F	M	F	M	F	M	F	M	F	M	F
Contempt.....																
Conspiracy.....	1		1													
Cruelty to animals.....																
Disorderly conduct.....			1													
Disorderly house.....	2								1							
Disposing of mortgaged property.....	1								1		2	1				
Disturbing religious worship.....																
Violation of election laws.....																
Embezzlement.....									2	2	1					
Escape.....	2															
Failure to list tax.....																
Food and drug laws.....																
Fish and Game laws.....																
Forcible trespass.....	3		2						3							
Forgery.....	5		3						1		1					
Fornication and adultery.....		1														
Gaming and lottery laws.....	2		1													
Health laws.....																
Incest.....																
Injury to property.....	3	1									1					
Municipal ordinances.....									1							
Non-support.....	5		3						2							
Non-support of illegitimate child.....	1		1						1							
Nuisance.....																
Official misconduct.....																
Perjury.....			1													
Prostitution.....	4	2	1			1				2						
Rape.....	1								1							
Receiving stolen goods.....	2		2			1										
Removing crop.....									1							
Resisting officer.....																
Robbery.....	1		2						1		1					
Seduction.....									1							
Slander.....																
Trespass.....	1		1													
Vagrancy.....	1		1													
Worthless Check.....	2								1	1	1					
False pretense.....	2		4								1					
Carnal knowledge, etc.....	1		1						1		2					
Crime against nature.....																
Slot machine laws.....																
Kidnaping.....																
Revenue act violations.....																
Miscellaneous.....	4								3							
Totals.....	157	11	145	11	3	2	2		84	10	56	6	1		1	

Convictions..... 331
 Not-pros..... 83
 Acquittals..... 57

Other Dispositions..... 18
 Total..... 489

FOURTEENTH JUDICIAL DISTRICT **IN SUPERIOR COURT**

Offense	JULY 1, 1942-JANUARY 1, 1944															
	CONVICTIONS								OTHER DISPOSITIONS							
	White		Negro		Indian		Unclassified		White		Negro		Indian		Unclassified	
	M	F	M	F	M	F	M	F	M	F	M	F	M	F	M	F
Assault.....	14		11	1					3		9	1			2	
Assault and battery.....			1												1	
Assault with deadly weapon.....	28	1	44	27			2		20	1	18	4			15	
Assault on female.....	10		6						6		2				7	
Assault with intent to kill.....	11	1	14	7					13		13	1			6	
Assault with intent to rape.....	2		1						2		2					
Assault—secret.....																
Drunk—drunk and disorderly.....	19		5	1					14	1	1				8	
Possession—illegal whiskey.....																
Possession for sale—sale.....																
Manufacturing—possession of material for.....																
Transportation.....																
Violation liquor laws.....	33	3	1	2			3		23	11	8	2			32	
Driving drunk.....	34		15						57	3	3				33	
Reckless driving.....	10		2				3		10		2				8	
Hit and run.....	2		3				1		4		1				5	
Speeding.....	6		1						7		2				1	
Auto license violations.....	3		4						4		2					
Violation motor vehicle laws.....			1												2	
Breaking and entering.....	21	4	13				1		2		4				1	
And larceny.....	25	1	52	1					6	1	6				6	
And receiving.....	1															
Housebreaking.....																
And larceny.....									1							
And receiving.....																
Storebreaking.....																
And larceny.....	6		1												1	
And receiving.....	2								1							
Larceny.....	40		49	4					17	2	10	2			6	
Larceny and receiving.....	15	4	30	4			3		10		11	4			4	
Larceny from the person.....	1		1													
Larceny by trick and device.....											1					
Larceny of automobile.....	9		1													
Temporary larceny.....																
Murder—first degree.....	2										7	1			1	
Murder—second degree.....	3		6													
Manslaughter.....	4		20	3					5		2				1	
Burglary—first degree.....									3							
Burglary—second degree.....	1		1								1					
Abandonment.....	14								8	1					5	
Abduction.....															1	
Affray.....																
Arson.....	1		1						2		1					
Bigamy.....	4		6	1											2	
Bribery.....																
Burning other than arson.....				1												
Carrying concealed weapon.....	1		8	1			1		1		3	1			4	

FOURTEENTH JUDICIAL DISTRICT—Continued

Offense	JULY 1, 1942-JANUARY 1, 1944															
	CONVICTIONS								OTHER DISPOSITIONS							
	White		Negro		Indian		Unclas- sified		White		Negro		Indian		Unclas- sified	
	M	F	M	F	M	F	M	F	M	F	M	F	M	F	M	F
Contempt.....	2		1													
Conspiracy.....	2								5							
Cruelty to animals.....	1								1							
Disorderly conduct.....	8		2	1					5	1	1					
Disorderly house.....																
Disposing of mortgaged property.....									1						1	
Disturbing religious worship.....																
Violation of election laws.....																
Embezzlement.....	3		2						6		2				1	
Escape.....																
Failure to list tax.....																
Food and drug laws.....																
Fish and Game laws.....																
Forcible trespass.....	4		2	1												
Forgery.....	8		1						4							
Fornication and adultery.....	1								1							
Gaming and lottery laws.....	4		1						2		1				1	
Health laws.....																
Incest.....																
Injury to property.....	3		1						5	1					1	
Municipal ordinances.....	2										1				3	
Non-support.....	20								9	2					9	
Non-support of illegitimate child.....	2		3						1		1				1	
Nuisance.....		1	1						2	1	1	1			2	
Official misconduct.....																
Perjury.....											1					
Prostitution.....	4	8	1	7					3	6	2				2	
Rape.....			1						3						2	
Receiving stolen goods.....	7		10				1		3		2				1	
Removing crop.....																
Resisting Officer.....	4		2	2					2		2	1				
Robbery.....	14	4	24	3					13		4	3				
Seduction.....			2								1					
Slander.....																
Trespass.....			1													
Vagrancy.....									1							
Worthless Check.....	2		1				1		1							
False pretense.....	3								8		1				2	
Carnal knowledge, etc.....	2		1						1		1					
Crime against nature.....	1	1	2						3		1					
Slot machine laws.....																
Kidnaping.....	1															
Revenue act violations.....																
Miscellaneous.....	1	1							4		1	1			1	
Totals.....	421	29	357	67			16		303	31	131	23			179	

Convictions.....	890	Other dispositions.....	58
Nol-pros.....	361		
Acquittals.....	248	Total.....	1,557

FIFTEENTH JUDICIAL DISTRICT IN SUPERIOR COURT

Offense	JULY 1, 1942-JANUARY 1, 1944															
	CONVICTIONS								OTHER DISPOSITIONS							
	White		Negro		Indian		Unclassified		White		Negro		Indian		Unclassified	
	M	F	M	F	M	F	M	F	M	F	M	F	M	F	M	F
Assault.....	13	2	4						10		1					
Assault and battery.....																
Assault with deadly weapon.....	27		21	3					18		4				1	
Assault on female.....	11		4						3							
Assault with intent to kill.....	4		2													
Assault with intent to rape.....	7										1					
Assault—secret.....																
Drunk—drunk and disorderly.....	38		4						2		2					
Possession—illegal whiskey.....	16	2	4	2					4							
Possession for sale—sale.....	17	1	4						4		1					
Manufacturing—possession of material for.....	12		4							2						
Transportation.....	16		6						3		4					
Violation liquor laws.....	10		1						1							
Driving drunk.....	157		19	1					44	1	1					
Reckless driving.....	14		5				1		7	1						
Hit and run.....	4		3						3							
Speeding.....																
Auto license violations.....	9		1						2							
Violation motor vehicle laws.....	6								2							
Breaking and entering.....	4		4	1					1		1					
And larceny.....	10		12				2		3		7				1	
And receiving.....	2		5						5		2					
Housebreaking.....																
And larceny.....																
And receiving.....																
Storebreaking.....																
And larceny.....																
And receiving.....																
Larceny.....	45	5	20	4			1		14		6					
Larceny and receiving.....	25		20						4	1	2				1	
Larceny from the person.....																
Larceny by trick and device.....																
Larceny of automobile.....	4		1						1							
Temporary larceny.....																
Murder—first degree.....	2	1	3													
Murder—second degree.....	3		1	1												
Manslaughter.....	11		2						2						1	
Burglary—first degree.....																
Burglary—second degree.....			1													
Abandonment.....	5		1						6		1				1	
Abduction.....																
Affray.....	5		8													
Arson.....									2							
Bigamy.....			1						1							
Bribery.....																
Burning other than arson.....																
Carrying concealed weapon.....	5		3						1							

FIFTEENTH JUDICIAL DISTRICT—Continued

Offense	JULY 1, 1942-JANUARY 1, 1944															
	CONVICTIONS								OTHER DISPOSITIONS							
	White		Negro		Indian		Unclassified		White		Negro		Indian		Unclassified	
	M	F	M	F	M	F	M	F	M	F	M	F	M	F	M	F
Contempt.....																
Conspiracy.....																
Cruelty to animals.....																
Disorderly conduct.....	6		1													
Disorderly house.....																
Disposing of mortgaged property.....	1								1							
Disturbing religious worship.....																
Violation of election laws.....																
Embezzlement.....			1						4							
Escape.....																
Failure to list tax.....																
Food and drug laws.....																
Fish and Game laws.....									2							
Forcible trespass.....	2										3					
Forgery.....	14		5						2		1					
Fornication and adultery.....	4	2		1					1	2						
Gaming and lottery laws.....	21		5	1					7							
Health laws.....																
Incest.....																
Injury to property.....	6		1													
Municipal ordinances.....	1															
Non-support.....	19		4						18							
Non-support of illegitimate child.....	4	1	1													
Nuisance.....																
Official misconduct.....																
Perjury.....			1						1							
Prostitution.....	6	3	1	2					2							
Rape.....	5		1						1		1					
Receiving stolen goods.....	11		3	1					3							
Removing crop.....																
Resisting Officer.....	4		2						2			1				
Robbery.....	8	2	3						3		2					
Seduction.....									1		1					
Slander.....																
Trespass.....	2		2						2							
Vagrancy.....	1	1							2							
Worthless Check.....	2															
False pretense.....	4	1	2						2	1	1					
Carnal knowledge, etc.....																
Crime against nature.....	1		1						1							
Slot machine laws.....																
Kidnaping.....																
Revenue act violations.....																
Miscellaneous.....	2								2	1						
Totals.....	606	21	198	17			4		200	9	42	1			5	

Convictions..... 846
 Nol-pros..... 215
 Acquittals..... 37

Other dispositions..... 5
 Total..... 1,103

JULY 1, 1942-JANUARY 1, 1944																
Offense	CONVICTIONS								OTHER DISPOSITIONS							
	White		Negro		Indian		Unclassified		White		Negro		Indian		Unclassified	
	M	F	M	F	M	F	M	F	M	F	M	F	M	F	M	F
Assault.....	7		6						8		5					
Assault and battery.....																
Assault with deadly weapon.....	30	6	13	3			1		9		7	1			1	1
Assault on female.....	7		6						2		1					
Assault with intent to kill.....	3		4	1												
Assault with intent to rape.....	7								4		3					
Assault—secret.....	1		1													
Drunk—drunk and disorderly.....	33	5	4						11							
Possession—illegal whiskey.....	2	1					1									
Possession for sale—sale.....																
Manufacturing—possession of material for.....	1															
Transportation.....	1		1													
Violation liquor laws.....	30	3	5	1			3		6	1	2	1				
Driving drunk.....	83	5	4				1		12							
Reckless driving.....	10								6							
Hit and run.....			1						1							
Speeding.....	1								1							
Auto license violations.....	13						8	2	2						1	1
Violation motor vehicle laws.....	4								1							
Breaking and entering.....	12	2	4						8	2		1				
And larceny.....	54		13						3							
And receiving.....	10		6						1		1					
Housebreaking.....	6															
And larceny.....																
And receiving.....																
Storebreaking.....																
And larceny.....																
And receiving.....																
Larceny.....	23	2	14	1					3		5					
Larceny and receiving.....	4	1	1	1					3							
Larceny from the person.....	2	1	3						2							
Larceny by trick and device.....																
Larceny of automobile.....	5		3						1							
Temporary larceny.....																
Murder—first degree.....									1							
Murder—second degree.....	2		3													
Manslaughter.....	9		5						6		1					
Burglary—first degree.....									1		1					
Burglary—second degree.....																
Abandonment.....	3		1						2		1					
Abduction.....																
Affray.....			1						4		1					
Arson.....			1						2							
Bigamy.....	7	3	3	3					1	1						
Bribery.....																
Burning other than arson.....	1															
Carrying concealed weapon.....	6															

SIXTEENTH JUDICIAL DISTRICT—Continued

Offense	JULY 1, 1942-JANUARY 1, 1944															
	CONVICTIONS								OTHER DISPOSITIONS							
	White		Negro		Indian		Unclas- sified		White		Negro		Indian		Unclas- sified	
	M	F	M	F	M	F	M	F	M	F	M	F	M	F	M	F
Contempt.....			1													
Conspiracy.....																
Cruelty to animals.....			1													
Disorderly conduct.....	1	2	1								1					
Disorderly house.....		3														
Disposing of mortgaged property.....									1		1					
Disturbing religious worship.....																
Violation of election laws.....																
Embezzlement.....	9						1		2							
Escape.....		2														
Failure to list tax.....																
Food and drug laws.....																
Fish and Game laws.....	1															
Forcible trespass.....	11		2													
Forgery.....	24	1		2					1							
Fornication and adultery.....	3	4							1							
Gaming and lottery laws.....			1							1						
Health laws.....			2													
Incest.....									1							
Injury to property.....			1						1							
Municipal ordinances.....	1								1							
Non-support.....	13		5						5		2					
Non-support of illegitimate child.....	10		4						3							
Nuisance.....																
Official misconduct.....																
Perjury.....	2								1							
Prostitution.....	2	3	1	1							1					
Rape.....									3		1					
Receiving stolen goods.....	8								2		1					
Removing crop.....																
Resisting Officer.....	3	1	3						2	1						
Robbery.....	3								1		3					
Seduction.....	1															
Slander.....																
Trespass.....	3		1													
Vagrancy.....	2	3	2						1		2					
Worthless Check.....	2								4							
False pretense.....	8		2						3							
Carnal knowledge, etc.....	2								2							
Crime against nature.....	1								1		1					
Slot machine laws.....									1							
Kidnaping.....									2							
Revenue act violations.....																
Miscellaneous.....	7								2							
Totals.....	488	48	130	13			15	2	141	7	41	3			2	2

Convictions..... 696
 Nol-pros..... 136
 Acquittals..... 50

Other dispositions..... 10
 Total..... 892

SEVENTEENTH JUDICIAL DISTRICT IN SUPERIOR COURT

JULY 1, 1942-JANUARY 1, 1944

Offense	CONVICTIONS								OTHER DISPOSITIONS							
	White		Negro		Indian		Unclassified		White		Negro		Indian		Unclassified	
	M	F	M	F	M	F	M	F	M	F	M	F	M	F	M	F
Assault.....	9		1	2					7			1				
Assault and battery.....	1															
Assault with deadly weapon.....	22	1					1		17							
Assault on female.....	6		1						3							
Assault with intent to kill.....	2								3							
Assault with intent to rape.....			2													
Assault—secret.....																
Drunk—drunk and disorderly.....	13		2						1							
Possession—illegal whiskey.....																
Possession for sale—sale.....									2							
Manufacturing—possession of material for.....																
Transportation.....	1															
Violation liquor laws.....	68	5	7						30	3						
Driving drunk.....	80	1	5				1		16							
Reckless driving.....	13						1		1		1					
Hit and run.....	1		1						2							
Speeding.....	1															
Auto license violations.....	2															
Violation motor vehicle laws.....	37	1	3						20		3					
Breaking and entering.....	13		1						8		1					
And larceny.....	1															
And receiving.....																
Housebreaking.....									1							
And larceny.....																
And receiving.....	6															
Storebreaking.....																
And larceny.....																
And receiving.....																
Larceny.....	25	1	1						9		1	2			1	
Larceny and receiving.....	27		5						9		1					
Larceny from the person.....																
Larceny by trick and device.....																
Larceny of automobile.....																
Temporary larceny.....																
Murder—first degree.....									8							
Murder—second degree.....																
Manslaughter.....	4		1						4	1						
Burglary—first degree.....																
Burglary—second degree.....																
Abandonment.....	5	1	1						2		1					
Abduction.....									2							
Affray.....	3								2							
Arson.....																
Bigamy.....																
Bribery.....									2							
Burning other than arson.....																
Carrying concealed weapon.....	13								2	1	1					

SEVENTEENTH JUDICIAL DISTRICT—Continued

Offense	JULY 1, 1942-JANUARY 1, 1944															
	CONVICTIONS								OTHER DISPOSITIONS							
	White		Negro		Indian		Unclas- sified		White		Negro		Indian		Unclas- sified	
	M	F	M	F	M	F	M	F	M	F	M	F	M	F	M	F
Contempt.....																
Conspiracy.....																
Cruelty to animals.....											1					
Disorderly conduct.....	5								1	2						
Disorderly house.....																
Disposing of mortgaged property.....									1		1					
Disturbing religious worship.....	2								1							
Violation of election laws.....																
Embezzlement.....									1							
Escape.....	2															
Failure to list tax.....																
Food and drug laws.....									1							
Fish and Game laws.....																
Forcible trespass.....	4	1	1						1							
Forgery.....									2	1						
Fornication and adultery.....	3	5	5						2	2	1	1				
Gaming and lottery laws.....	1															
Health laws.....																
Incest.....									1							
Injury to property.....	8								1							
Municipal ordinances.....									12							
Non-support.....	17		1						6							
Non-support of illegitimate child.....	6								5		1					
Nuisance.....	3															
Official misconduct.....																
Perjury.....	5								1							
Prostitution.....		1	4						4	3	1	1				
Rape.....									1							
Receiving stolen goods.....	1	1	1									1				
Removing crop.....																
Resisting Officer.....	5		2						1							
Robbery.....	4		1						2							
Seduction.....									1							
Slander.....									1	1						
Trespass.....									1							
Vagrancy.....		2							1							
Worthless Check.....	5								1	1	1					
False pretense.....	1								2							
Carnal knowledge, etc.....									1							
Crime against nature.....									1							
Slot machine laws.....		1					1		5							
Kidnaping.....																
Revenue act violations.....																
Miscellaneous.....	4	1							6		1					
Totals.....	429	22	46	2			4		214	15	15	7			1	

Convict ons..... 503

Nol-pros..... 156

Acquittals..... 35

Other dispositions..... 61

Total..... 755

EIGHTEENTH JUDICIAL DISTRICT **IN SUPERIOR COURT**

Offense	JULY 1, 1942-JANUARY 1, 1944															
	CONVICTIONS								OTHER DISPOSITIONS							
	White		Negro		Indian		Unclassified		White		Negro		Indian		Unclassified	
	M	F	M	F	M	F	M	F	M	F	M	F	M	F	M	F
Assault.....	11		4	1					7		3					
Assault and battery.....	2	1														
Assault with deadly weapon.....	48	2	25	6					11	1	19	3				
Assault on female.....	5		5						2		2					
Assault with intent to kill.....	2		1													
Assault with intent to rape.....	1															
Assault—secret.....																
Drunk—drunk and disorderly.....	32								8							
Possession—illegal whiskey.....	4		2													
Possession for sale—sale.....	1		1	3												
Manufacturing—possession of material for.....	15		2						2							
Transportation.....	15		7	2					5							
Violation liquor laws.....	13	7	7	1					17	1	3					
Driving drunk.....	75	1	7						26	1						
Reckless driving.....	9		4						4		2					
Hit and run.....																
Speeding.....	1	1	1						1							
Auto license violations.....	4								1							
Violation motor vehicle laws.....	1		4						1							
Breaking and entering.....	9	1	6						7		1	1				
And larceny.....	9		3						2							
And receiving.....																
Housebreaking.....																
And larceny.....																
And receiving.....																
Storebreaking.....																
And larceny.....																
And receiving.....																
Larceny.....	61	4	13	6					30	3	12	1				
Larceny and receiving.....									1							
Larceny from the person.....																
Larceny by trick and device.....																
Larceny of automobile.....			1													
Temporary larceny.....			1													
Murder—first degree.....	1								8	2	2	1				
Murder—second degree.....	6															
Manslaughter.....	3		1													
Burglary—first degree.....																
Burglary—second degree.....																
Abandonment.....	11		2						4							
Abduction.....									1							
Affray.....			1	1					1							
Arson.....	2								1							
Bigamy.....	2	1							1							
Bribery.....																
Burning other than arson.....																
Carrying concealed weapon.....	7		3						2							

EIGHTEENTH JUDICIAL DISTRICT—Continued

Offense	JULY 1, 1942-JANUARY 1, 1944															
	CONVICTIONS								OTHER DISPOSITIONS							
	White		Negro		Indian		Unclassified		White		Negro		Indian		Unclassified	
	M	F	M	F	M	F	M	F	M	F	M	F	M	F	M	F
Contempt.....																
Conspiracy.....																
Cruelty to animals.....																
Disorderly conduct.....	1										2					
Disorderly house.....									1	3						
Disposing of mortgaged property.....									1							
Disturbing religious worship.....									2							
Violation of election laws.....																
Embezzlement.....	4								1							
Escape.....	1		2						4		1					
Failure to list tax.....																
Food and drug laws.....																
Fish and Game laws.....	2															
Forcible trespass.....	8		2						1		2					
Forgery.....	10								2							
Fornication and adultery.....	4	6	1	1					4	3	1					
Gaming and lottery laws.....												1				
Health laws.....																
Incest.....	1															
Injury to property.....	1								1		1					
Municipal ordinances.....									1							
Non-support.....	13								3							
Non-support of illegitimate child.....	2								2		1					
Nuisance.....		1														
Official misconduct.....	5															
Perjury.....										1						
Prostitution.....	4	3								1						
Rape.....									3							
Receiving stolen goods.....	4	1							1							
Removing crop.....																
Resisting Officer.....	3		2						3		1					
Robbery.....	7								4							
Seduction.....											1					
Slander.....																
Trespass.....																
Vagrancy.....																
Worthless Check.....	1								2							
False pretense.....	4		2						2							
Carnal knowledge, etc.....																
Crime against nature.....									1							
Slot machine laws.....																
Kidnaping.....											1					
Revenue act violations.....									3							
Miscellaneous.....	6			1					4							
Totals.....	431	29	110	22					189	16	55	7				

Convictions..... 592
 Nol-pros..... 212
 Acquittals..... 38

Other dispositions..... 17
 Total..... 859

NINETEENTH JUDICIAL DISTRICT IN SUPERIOR COURT

Offense	JULY 1, 1942-JANUARY 1, 1944															
	CONVICTIONS								OTHER DISPOSITIONS							
	White		Negro		Indian		Unclas- sified		White		Negro		Indian		Unclas- sified	
	M	F	M	F	M	F	M	F	M	F	M	F	M	F	M	F
Assault.....	5								1							
Assault and battery.....																
Assault with deadly weapon.....	16		8						13	2	2	2				
Assault on female.....	4		1		1				4		1					
Assault with intent to kill.....	8	2		1					8							
Assault with intent to rape.....	1		1						4							
Assault—secret.....									1							
Drunk—drunk and disorderly.....	30	1	1						8	1						
Possession—illegal whiskey.....	2															
Possession for sale—sale.....	1								2		1					
Manufacturing—possession of material for.....	4															
Transportation.....	12		1													
Violation liquor laws.....	3															
Driving drunk.....	27	1							2							
Reckless driving.....	5								3							
Hit and run.....									1							
Speeding.....																
Auto license violations.....			1								1					
Violation motor vehicle laws.....																
Breaking and entering.....	12		1	1					2							
And larceny.....	3		2						1							
And receiving.....	9		20						6							
Housebreaking.....																
And larceny.....	15								9							
And receiving.....																
Storebreaking.....																
And larceny.....																
And receiving.....																
Larceny.....	27	2	6	1					4	2	1	3				
Larceny and receiving.....	6	2	2	1					6							
Larceny from the person.....	2															
Larceny by trick and device.....																
Larceny of automobile.....	4								3		1					
Temporary larceny.....	2		1													
Murder—first degree.....									2							
Murder—second degree.....	2		4													
Manslaughter.....	3	1	9	1					2							
Burglary—first degree.....																
Burglary—second degree.....																
Abandonment.....	7								6		2				2	
Abduction.....																
Affray.....																
Arson.....									2							
Bigamy.....	3								1	1						
Bribery.....	1															
Burning other than arson.....				1												
Carrying concealed weapon.....	1		1						1							

NINETEENTH JUDICIAL DISTRICT—Continued

Offense	JULY 1, 1942-JANUARY 1, 1944															
	CONVICTIONS								OTHER DISPOSITIONS							
	White		Negro		Indian		Unclassified		White		Negro		Indian		Unclassified	
	M	F	M	F	M	F	M	F	M	F	M	F	M	F	M	F
Contempt.....																
Conspiracy.....									2	1						
Cruelty to animals.....	1								2							
Disorderly conduct.....	2	1							2	1						
Disorderly house.....				1					1							
Disposing of mortgaged property.....																
Disturbing religious worship.....	1															
Violation of election laws.....																
Embezzlement.....	8		1						4	1	1				3	
Escape.....																
Failure to list tax.....																
Food and drug laws.....																
Fish and Game laws.....																
Forcible trespass.....	29	1	12													
Forgery.....	8								2							
Fornication and adultery.....	1	5							2	2						
Gaming and lottery laws.....	3								2							
Health laws.....	1	6		1					3	3		1				
Incest.....									1							
Injury to property.....	6															
Municipal ordinances.....																
Non-support.....	5		1						7		2					
Non-support of illegitimate child.....	5		1						1		1					
Nuisance.....																
Official misconduct.....																
Perjury.....																
Prostitution.....	3	23		2					3	1						
Rape.....											2					
Receiving stolen goods.....	4		1						3							
Removing crop.....									1							
Resisting Officer.....																
Robbery.....	5		4	1					9		2					
Seduction.....																
Slander.....												1				
Trespass.....	1								2							
Vagrancy.....		11							3		1					
Worthless Check.....	2															
False pretense.....	6		4	1					5							
Carnal knowledge, etc.....	1								3							
Crime against nature.....																
Slot machine laws.....																
Kidnaping.....									3							
Revenue act violations.....																
Miscellaneous.....	3															
Totals.....	310	56	83	12	1				153	15	18	7			5	

Convictions..... 462
 Not-pros..... 147
 Acquittals..... 46

Other dispositions..... 5
 Total..... 660

**TWENTIETH JUDICIAL DISTRICT
IN SUPERIOR COURT**

Offense	JULY 1, 1942-JANUARY 1, 1944															
	CONVICTIONS								OTHER DISPOSITIONS							
	White		Negro		Indian		Unclassified		White		Negro		Indian		Unclassified	
	M	F	M	F	M	F	M	F	M	F	M	F	M	F	M	F
Assault.....	26	4	1	3			6	1	26		3	3	1		5	1
Assault and battery.....																
Assault with deadly weapon.....	37	5	3		1				28	2	1		1			
Assault on female.....	2						2		3		1				1	
Assault with intent to kill.....											1					
Assault with intent to rape.....	2		2						2							
Assault—secret.....																
Drunk—drunk and disorderly.....	4								5							
Possession—illegal whiskey.....	1														3	
Possession for sale—sale.....																
Manufacturing—possession of material for.....	2						2		1						1	
Transportation.....	5							1							3	
Violation liquor laws.....	50	1	2		2				69	20	1					
Driving drunk.....	216	1	3		6		9	1	91	1					4	
Reckless driving.....	20		4		1		1		22	1					1	
Hit and run.....	2						1		1							
Speeding.....	1															
Auto license violations.....	9						1		4							
Violation motor vehicle laws.....	1								3							
Breaking and entering.....	10	1					3		5							
And larceny.....	18								3							
And receiving.....									4		1					
Housebreaking.....									1							
And larceny.....																
And receiving.....	4								15		1					
Storebreaking.....																
And larceny.....																
And receiving.....																
Larceny.....	47	4	5	1	4		4		62	2	2	1			1	
Larceny and receiving.....																
Larceny from the person.....	1															
Larceny by trick and device.....																
Larceny of automobile.....			2						1							
Temporary larceny.....	1				1											
Murder—first degree.....	1						1		7	1		1				
Murder—second degree.....	4		1													
Manslaughter.....	1			1			1		1							
Burglary—first degree.....																
Burglary—second degree.....	1		1													
Abandonment.....	11	1			4				29	2	2					
Abduction.....																
Affray.....	17	6					3		6	1					1	
Arson.....									3							
Bigamy.....	1		1													
Bribery.....																
Burning other than arson.....									1							
Carrying concealed weapon.....	26						1	2	7	1						1

TWENTIETH JUDICIAL DISTRICT—Continued

Offense	JULY 1, 1942-JANUARY 1, 1944															
	CONVICTIONS								OTHER DISPOSITIONS							
	White		Negro		Indian		Unclassified		White		Negro		Indian		Unclassified	
	M	F	M	F	M	F	M	F	M	F	M	F	M	F	M	F
Contempt.....	1															
Conspiracy.....																
Cruelty to animals.....	1															
Disorderly conduct.....	2		1						1							
Disorderly house.....		1							1	2						
Disposing of mortgaged property.....																
Disturbing religious worship.....	1								4							
Violation of election laws.....																
Embezzlement.....									2							
Escape.....	2	1							1							
Failure to list tax.....																
Food and drug laws.....																
Fish and Game laws.....	3															
Forcible trespass.....									1							
Forgery.....	7				1		1	3	6						1	
Fornication and adultery.....	4	5					1		5	4					1	
Gaming and lottery laws.....	3		1						4							
Health laws.....	1															
Incest.....	1															
Injury to property.....	4								8	1						
Municipal ordinances.....									1							
Non-support.....	14				1		1		16				1			
Non-support of illegitimate child.....	1								2				1			
Nuisance.....	3								6	3						
Official misconduct.....																
Perjury.....									3							
Prostitution.....																
Rape.....	2								2		1					
Receiving stolen goods.....	3	2			1				1							
Removing crop.....									3							
Resisting Officer.....	4							2	5							
Robbery.....	6								4							
Seduction.....			1						1							
Slander.....																
Trespass.....	1								4						1	
Vagrancy.....																
Worthless Check.....									6							
False pretense.....	3								6	1	1					
Carnal knowledge, etc.....																
Crime against nature.....											1					
Slot machine laws.....	17	5		1					3	1						
Kidnaping.....	1								1							
Revenue act violations.....									1							
Miscellaneous.....	1								1							
Totals.....	607	37	28	6	22		38	10	499	43	16	5	4		23	2

Convictions..... 748
 Nol-pros..... 506
 Acquittals..... 39

Other dispositions..... 47
 Total..... 1,340

**TWENTY-FIRST JUDICIAL DISTRICT
IN SUPERIOR COURT**

Offense	JULY 1, 1942-JANUARY 1, 1944															
	CONVICTIONS								OTHER DISPOSITIONS							
	White		Negro		Indian		Unclassified		White		Negro		Indian		Unclassified	
	M	F	M	F	M	F	M	F	M	F	M	F	M	F	M	F
Assault.....	21	1	7	2					1		1				1	
Assault and battery.....	1															
Assault with deadly weapon.....	27	3	20	1					3	1	1				1	
Assault on female.....	7		4						4		2					
Assault with intent to kill.....	8										1					
Assault with intent to rape.....	3		1													
Assault—secret.....																
Drunk—drunk and disorderly.....	45		8	1			2		4						1	
Possession—illegal whiskey.....			2	1												
Possession for sale—sale.....	2	1														
Manufacturing—possession of material for.....	7		2													
Transportation.....	4										1					
Violation liquor laws.....	26	3	11	3					5		1	1				
Driving drunk.....	71	1	13	1					10				1		1	
Reckless driving.....	10		3				1		1		2				4	
Hit and run.....	2		2								1					
Speeding.....	2								1		1					
Auto license violations.....	7															
Violation motor vehicle laws.....	2	1	1													
Breaking and entering.....	6	1	2													
And larceny.....			1								1					
And receiving.....	17		8						6							
Housebreaking.....																
And larceny.....																
And receiving.....	11	1		1					1							
Storebreaking.....																
And larceny.....																
And receiving.....																
Larceny.....	4		8		1				5		3				1	
Larceny and receiving.....	10		7						1							
Larceny from the person.....	1	1							1							
Larceny by trick and device.....																
Larceny of automobile.....																
Temporary larceny.....																
Murder—first degree.....																
Murder—second degree.....	2		2													
Manslaughter.....	6		2						1	1	2				2	
Burglary—first degree.....																
Burglary—second degree.....				1												
Abandonment.....	9		2						2		1					
Abduction.....																
Affray.....			3	3												
Arson.....																
Bigamy.....																
Bribery.....																
Burning other than arson.....															1	
Carrying concealed weapon.....	5		5						2						1	

TWENTY-FIRST JUDICIAL DISTRICT—Continued

Offense	JULY 1, 1942-JANUARY 1, 1944															
	CONVICTIONS								OTHER DISPOSITIONS							
	White		Negro		Indian		Unclas- sified		White		Negro		Indian		Unclas- sified	
	M	F	M	F	M	F	M	F	M	F	M	F	M	F	M	F
Contempt.....																
Conspiracy.....																
Cruelty to animals.....									1							
Disorderly conduct.....	8	1	1	3					1							
Disorderly house.....																
Disposing of mortgaged property.....																
Disturbing religious worship.....			2													
Violation of election laws.....																
Embezzlement.....	1		1						1	2						
Escape.....																
Failure to list tax.....																
Food and drug laws.....																
Fish and Game laws.....																
Forcible trespass.....	18		4				2									
Forgery.....	5	1	3						2							
Fornication and adultery.....																
Gaming and lottery laws.....														1		
Health laws.....																
Incest.....	1															
Injury to property.....	2		1						2							
Municipal ordinances.....	1															
Non-support.....	14		4						1	2						
Non-support of illegitimate child.....			1						1	1						
Nuisance.....	2	2							2	1						
Official misconduct.....																
Perjury.....																
Prostitution.....	2	1	1						1							
Rape.....			1													
Receiving stolen goods.....			3								1					
Removing crop.....	1															
Resisting Officer.....	4		3	3												
Robbery.....	5	2	2						2							
Seduction.....	2		1													
Slander.....																
Trespass.....	2		2													
Vagrancy.....	1		1						1							
Worthless Check.....	3	1														
False pretense.....	4								1							
Carnal knowledge, etc.....	2								1							
Crime against nature.....	1		1													
Slot machine laws.....																
Kidnaping.....	5															
Revenue act violations.....	1															
Miscellaneous.....		1							3							
Totals.....	401	22	146	20	1		5		63	7	24	2	1		13	

Convictions..... 595

Nol-pros..... 53

Acquittals..... 39

Other dispositions..... 18

Total..... 705

ALPHABETICAL LIST OF CRIMES IN SUPERIOR COURTS

Offense	JULY 1, 1942-JANUARY 1, 1944	
	CONVICTIONS	OTHER DISPOSITIONS
Assault.....	323	179
Assault and Battery.....	18	13
Assault with deadly weapon.....	959	414
Assault on female.....	232	95
Assault with intent to kill.....	209	104
Assault with intent to rape.....	88	47
Assault—secret.....	14	13
Drunk—drunk and disorderly.....	498	149
Possession—illegal whiskey.....	81	25
Possession for sale—sale.....	81	51
Manufacturing—possession of material for.....	65	13
Transportation.....	87	25
Violation liquor laws.....	431	295
Driving drunk.....	1,135	441
Reckless driving.....	236	179
Hit and run.....	61	38
Speeding.....	37	29
Auto license violations.....	81	27
Violation motor vehicle laws.....	101	59
Breaking and entering.....	346	94
And larceny.....	392	98
And receiving.....	261	55
Housebreaking.....	20	11
And larceny.....	167	50
And receiving.....	56	25
Storebreaking.....	18	2
And larceny.....	37	7
And receiving.....	115	15
Larceny.....	1,048	417
Larceny and receiving.....	368	120
Larceny from the person.....	149	46
Larceny by trick and device.....	6	5
Larceny of automobile.....	192	29
Temporary larceny.....	25	4
Murder—first degree.....	34	102
Murder—second degree.....	168	4
Manslaughter.....	263	120
Burglary—first degree.....	6	22
Burglary—second degree.....	42	2
Abandonment.....	115	112
Abduction.....	3	7
Affray.....	67	32
Arson.....	13	21
Bigamy.....	108	29
Bribery.....	3	7
Burning other than arson.....	16	9
Carrying concealed weapon.....	136	47*
Contempt.....	9	
Conspiracy.....	15	13

ALPHABETICAL LIST OF CRIMES IN SUPERIOR COURTS— Continued

Offense	JULY 1, 1942-JANUARY 1, 1944	
	CONVICTIONS	OTHER DISPOSITIONS
Cruelty to animals.....	8	8
Disorderly conduct.....	88	48
Disorderly house.....	20	20
Disposing of mortgaged property.....	7	17
Disturbing religious worship.....	9	9
Violation of election laws.....		
Embezzlement.....	79	59
Escape.....	30	11
Failure to list tax.....	4	3
Food and drug laws.....		1
Fish and game laws.....	7	8
Forcible trespass.....	245	17
Forgery.....	354	62
Fornication and adultery.....	106	55
Gaming and lottery laws.....	101	32
Health laws.....	25	21
Incest.....	9	4
Injury to property.....	73	40
Municipal ordinances.....	18	34
Non-support.....	201	136
Non-support of illegitimate child.....	91	43
Nuisance.....	41	36
Official misconduct.....	5	4
Perjury.....	21	23
Prostitution.....	174	96
Rape.....	28	44
Receiving stolen goods.....	164	45
Removing crop.....	4	9
Resisting Officer.....	105	39
Robbery.....	327	127
Seduction.....	16	18
Slander.....		6
Trespass.....	45	34
Vagrancy.....	62	44
Worthless.....	88	30
False pretense.....	85	76
Carnal knowledge, etc.....	37	26
Crime against nature.....	31	21
Slot machine laws.....	27	10
Kidnaping.....	7	15
Revenue act violations.....	1	4
Miscellaneous.....	105	126

Convictions.....11,783
Other dispositions.....5,162

FIRST JUDICIAL DISTRICT **INFERIOR COURTS**

Offense	JULY 1, 1942-JANUARY 1, 1944															
	CONVICTIONS								OTHER DISPOSITIONS							
	White		Negro		Indian		Unclassified		White		Negro		Indian		Unclassified	
	M	F	M	F	M	F	M	F	M	F	M	F	M	F	M	F
Assault.....	101	12	180	36	---	---	4	1	19	2	55	9	---	---	1	---
Assault and battery.....	---	---	1	---	---	---	5	---	1	1	---	---	---	---	---	---
Assault with deadly weapon.....	19	---	82	11	---	---	4	---	8	---	26	5	---	---	---	1
Assault on female.....	7	---	9	---	---	---	3	---	2	---	7	---	---	---	2	---
Assault with intent to kill.....	1	---	1	---	---	---	---	---	1	---	9	---	---	---	---	---
Assault with intent to rape.....	---	---	1	---	---	---	---	---	3	---	---	---	---	---	---	---
Assault—secret.....	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---
Drunk—drunk and disorderly.....	614	33	310	10	---	---	25	1	12	1	5	---	---	---	---	---
Possession—illegal whiskey.....	10	---	11	---	---	---	---	---	---	---	2	---	---	---	---	---
Possession for sale—sale.....	5	---	20	4	---	---	---	---	---	---	8	9	---	---	---	---
Manufacturing—possession of material for.....	---	---	1	---	---	---	---	---	---	---	---	---	---	---	---	---
Transportation.....	6	---	2	---	---	---	---	---	1	---	---	---	---	---	---	---
Violation liquor laws.....	4	---	4	---	---	---	---	---	1	---	1	1	---	---	---	---
Driving drunk.....	160	3	50	---	---	---	11	---	16	1	3	---	---	---	---	---
Reckless driving.....	139	4	88	1	---	---	13	---	22	2	11	---	---	---	2	---
Hit and run.....	9	---	8	---	---	---	---	---	5	1	2	---	---	---	---	---
Speeding.....	515	21	139	1	---	---	84	3	11	---	---	---	---	---	---	---
Auto license violations.....	126	24	142	10	---	---	23	---	7	1	4	1	---	---	1	---
Violation motor vehicle laws.....	103	2	133	---	---	---	18	---	7	---	5	---	---	---	---	---
Breaking and entering.....	---	---	1	---	---	---	---	---	---	---	6	---	---	---	---	---
And larceny.....	---	---	---	---	---	---	---	---	1	---	3	---	---	---	---	---
And receiving.....	---	---	---	---	---	---	---	---	---	---	1	---	---	---	---	---
Housebreaking.....	---	---	---	---	---	---	---	---	---	---	7	---	---	---	---	---
And larceny.....	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---
And receiving.....	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---
Storebreaking.....	1	---	1	---	---	---	---	---	2	---	1	---	---	---	---	---
And larceny.....	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---
And receiving.....	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---
Larceny.....	18	3	49	3	---	---	2	---	14	1	30	2	---	---	2	---
Larceny and receiving.....	---	---	7	---	---	---	---	---	---	---	4	---	---	---	---	---
Larceny from the person.....	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---
Larceny by trick and device.....	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---
Larceny of automobile.....	---	---	1	---	---	---	---	---	2	---	7	---	---	---	---	---
Temporary larceny.....	7	---	7	---	---	---	---	---	1	---	1	---	---	---	---	---
Murder—first degree.....	---	---	---	---	---	---	---	---	---	---	5	---	---	---	1	---
Murder—second degree.....	---	---	---	---	---	---	---	---	---	---	2	---	---	---	---	---
Manslaughter.....	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---
Burglary—first degree.....	---	---	---	---	---	---	---	---	1	---	---	---	---	---	---	---
Burglary—second degree.....	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---
Abandonment.....	---	---	5	---	---	---	---	---	2	---	---	---	---	---	---	---
Abduction.....	---	---	1	---	---	---	---	---	---	---	1	---	---	---	---	---
Affray.....	37	7	33	5	---	---	---	---	3	---	4	1	---	---	---	---
Arson.....	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---
Bigamy.....	---	---	---	---	---	---	---	---	---	---	1	---	---	---	---	---
Bribery.....	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---
Burning other than arson.....	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---
Carrying concealed weapon.....	17	---	15	---	---	---	---	---	3	---	4	---	---	---	---	---

FIRST JUDICIAL DISTRICT—Continued

Offense	JULY 1, 1942-JANUARY 1, 1944															
	CONVICTIONS								OTHER DISPOSITIONS							
	White		Negro		Indian		Unclassified		White		Negro		Indian		Unclassified	
	M	F	M	F	M	F	M	F	M	F	M	F	M	F	M	F
Contempt.....		1	3													
Conspiracy.....											2					
Cruelty to animals.....	1										1					
Disorderly conduct.....	66	9	87	11					7	4	8	3			1	
Disorderly house.....		2	4								1					
Disposing of mortgaged property.....			1													
Disturbing religious worship.....																
Violation of election laws.....																
Embezzlement.....									2		5					
Escape.....			1													
Failure to list tax.....	16	1	12													
Food and drug laws.....																
Fish and Game laws.....	1		2						1	1						
Forcible trespass.....	2		3	1					1							
Forgery.....	1		1						1		5					
Fornication and adultery.....	8	8	17	17			3	2	1	1	1	1				
Gaming and lottery laws.....	78		164	5					1		5	1				
Health laws.....	1	2	3							2						
Incest.....																
Injury to property.....	26	3	11	3					3		2					
Municipal ordinances.....	858	57	124	6					4		6	1				
Non-support.....	9		29				3		1		6					
Non-support of illegitimate child.....			9				2				4					
Nuisance.....	1														2	
Official misconduct.....																
Perjury.....																
Prostitution.....	4	7	4	5					1		2	1				
Rape.....									1		2					
Receiving stolen goods.....	2		4						2		6					
Removing crop.....	2															
Resisting Officer.....	21	1	9	1			1		1							
Robbery.....											3					
Seduction.....																
Slander.....																
Trespass.....	21		35	5			4		9		6	5			1	
Vagrancy.....	9	11	33				3		3		10	1			2	
Worthless Check.....	24	2	2	1					7							
False pretense.....	3		4						3		4					
Carnal knowledge, etc.....									1							
Crime against nature.....																
Slot machine laws.....	1															
Kidnaping.....																
Revenue act violations.....																
Miscellaneous.....	16		8	6			17	1	7		4	3				
Totals.....	3070	213	1872	142			225	8	202	18	295	47			15	1

Bound over to Superior Court..... 98
 Convictions..... 5,530
 Nol-pros..... 173

Acquittals..... 209
 Other dispositions..... 98
 Total..... 6,108

SECOND JUDICIAL DISTRICT INFERIOR COURTS

Offense	JULY 1, 1942-JANUARY 1, 1944															
	CONVICTIONS								OTHER DISPOSITIONS							
	White		Negro		Indian		Unclas- sified		White		Negro		Indian		Unclas- sified	
	M	F	M	F	M	F	M	F	M	F	M	F	M	F	M	F
Assault.....	30	6	53	23			2		28	3	41	13				
Assault and battery.....			2													
Assault with deadly weapon.....	32	2	90	33			3		24		42	6			1	
Assault on female.....	16		47						17		28					
Assault with intent to kill.....	1								1						2	
Assault with intent to rape.....	1										3					
Assault—secret.....									1		1					
Drunk—drunk and disorderly.....	470	24	273	36					18	3	7	1				
Possession—illegal whiskey.....	14	1	17	7					6		1					
Possession for sale—sale.....	11	1	15	1					1		2	2			1	
Manufacturing—possession of material for.....	16		8						5		4					
Transportation.....	4								2							
Violation liquor laws.....	46	2	44	7					2		14	7				
Driving drunk.....	72	2	37				2		27	2	4					
Reckless driving.....	56		13						28	2	13	1				
Hit and run.....	1		2						1		1					
Speeding.....	170	6	42	1			2		13	1	3					
Auto license violations.....	61	5	38				1		6	1	3					
Violation motor vehicle laws.....	176	7	65	1					19	2	4	1				
Breaking and entering.....			4						2		11					
And larceny.....									5		11					
And receiving.....											1					
Housebreaking.....			1													
And larceny.....											1	1				
And receiving.....																
Storebreaking.....																
And larceny.....																
And receiving.....																
Larceny.....	43	1	91	19			1		16	6	42	17				
Larceny and receiving.....	9	1	35	2					4		13	2				
Larceny from the person.....			3						4		9					
Larceny by trick and device.....			3													
Larceny of automobile.....																
Temporary larceny.....																
Murder—first degree.....									1		5					
Murder—second degree.....																
Manslaughter.....									4							
Burglary—first degree.....									1		4					
Burglary—second degree.....																
Abandonment.....	7	2	6	1					6	2	3					
Abduction.....											1					
Affray.....	21	1	33	23					10	1	6	3				
Arson.....											1					
Bigamy.....									1	1						
Bribery.....																
Burning other than arson.....									1							
Carrying concealed weapon.....	6		16	2					1						1	

SECOND JUDICIAL DISTRICT—Continued

Offense	JULY 1, 1942-JANUARY 1, 1944															
	CONVICTIONS								OTHER DISPOSITIONS							
	White		Negro		Indian		Unclas- sified		White		Negro		Indian		Unclas- sified	
	M	F	M	F	M	F	M	F	M	F	M	F	M	F	M	F
Contempt.....	1															
Conspiracy.....																
Cruelty to animals.....			1						4		1					
Disorderly conduct.....	31	15	63	29			1		15	4	18	4				
Disorderly house.....	5		2	1					1	3						
Disposing of mortgaged property.....			1						1							
Disturbing religious worship.....																
Violation of election laws.....			1													
Embezzlement.....	1		2						4							
Escape.....				2												
Failure to list tax.....	3		2						1							
Food and drug laws.....																
Fish and Game laws.....	3		2				1		5							
Forcible trespass.....	2		3													
Forgery.....			1						3		4					
Fornication and adultery.....	2	2	12	12					4	4	2	2				
Gaming and lottery laws.....	10		198	4					10		11					
Health laws.....	3	2	43	12							1					
Incest.....																
Injury to property.....	5		10	2					1		4	2				
Municipal ordinances.....	25		4						6		1					
Non-support.....	23		33						9	1	8					
Non-support of illegitimate child.....	7		22				1		4		10					
Nuisance.....																
Official misconduct.....																
Perjury.....											4	1				
Prostitution.....	8	41	3	3					3	5						
Rape.....									6		7					
Receiving stolen goods.....	11		5						1		2	2				
Removing crop.....									1							
Resisting Officer.....	9	1	10						2		2	1				
Robbery.....									2		6				1	
Seduction.....									1							
Slander.....																
Trespass.....	5		14	1					8	1	4	1				
Vagrancy.....	7	6	13	3					2	4	3					
Worthless Check.....	10	1	1						8		2					
False pretense.....			8						4		6					
Carnal knowledge, etc.....									2		2					
Crime against nature.....											1					
Slot machine laws.....																
Kidnaping.....									3		1					
Revenue act violations.....	1															
Miscellaneous.....	2	1	3	1					9	2	3					
Totals.....	1437	130	1395	226			13	1	372	49	381	69			6	

Bound over to Superior Court..... 135
 Convictions..... 3,202
 Nol-pros..... 223

Acquittals..... 387
 Other dispositions..... 132
 Total..... 4,079

THIRD JUDICIAL DISTRICT INFERIOR COURTS

Offense	JULY 1, 1942-JANUARY 1, 1944															
	CONVICTIONS								OTHER DISPOSITIONS							
	White		Negro		Indian		Unclassified		White		Negro		Indian		Unclassified	
	M	F	M	F	M	F	M	F	M	F	M	F	M	F	M	F
Assault.....	71	8	106	11					24	3	29	9				
Assault and battery.....																
Assault with deadly weapon.....	41	3	135	22			1		20		39	6			1	
Assault on female.....	15		47						2		16					
Assault with intent to kill.....			1						1							
Assault with intent to rape.....											2					
Assault—secret.....																
Drunk—drunk and disorderly.....	205	9	99	3					13	1	3					
Possession—illegal whiskey.....	5		9	3					3		1					
Possession for sale—sale.....	13	3	22	2					5		1					
Manufacturing—possession of material for.....	2		11						1	5						
Transportation.....	2		8	1							1					
Violation liquor laws.....	24	1	30	4					3	1	4				1	
Driving drunk.....	189	3	113						33		5					
Reckless driving.....	48		55	1			1		25		20					
Hit and run.....	2		3						3		2					
Speeding.....	241	3	93	1			1		20	1	3				1	
Auto license violations.....	45	2	94	3					8	1	2					
Violation motor vehicle laws.....	16	1	15						3		4					
Breaking and entering.....			1								1					
And larceny.....			1						1		2					
And receiving.....			1						3		4					
Housebreaking.....																
And larceny.....																
And receiving.....																
Storebreaking.....																
And larceny.....																
And receiving.....																
Larceny.....	16		98	8					13	1	34	5			1	
Larceny and receiving.....			1	1							2					
Larceny from the person.....											2					
Larceny by trick and device.....																
Larceny of automobile.....			1						1		2					
Temporary larceny.....			8						1							
Murder—first degree.....									1		1					
Murder—second degree.....																
Manslaughter.....									1							
Burglary—first degree.....																
Burglary—second degree.....																
Abandonment.....	5		11						4		3				1	
Abduction.....																
Affray.....	15	5	38	7					5		14	1				
Arson.....																
Bigamy.....																
Bribery.....																
Burning other than arson.....									1							
Carrying concealed weapon.....	5		16						3		1					

THIRD JUDICIAL DISTRICT—Continued

Offense	JULY 1, 1942-JANUARY 1, 1944															
	CONVICTIONS								OTHER DISPOSITIONS							
	White		Negro		Indian		Unclassified		White		Negro		Indian		Unclassified	
	M	F	M	F	M	F	M	F	M	F	M	F	M	F	M	F
Contempt.....																
Conspiracy.....																
Cruelty to animals.....	1		2	1							4					
Disorderly conduct.....	10	4	16	4					3		1	1				
Disorderly house.....		1							4							
Disposing of mortgaged property.....									4		1					
Disturbing religious worship.....			1													
Violation of election laws.....																
Embezzlement.....	1															
Escape.....	5		13	2					1							
Failure to list tax.....	1								1							
Food and drug laws.....																
Fish and Game laws.....			1													
Forcible trespass.....	4	2	8						2							
Forgery.....																
Fornication and adultery.....	2	1	7	5					3	2	2	3				
Gaming and lottery laws.....	38		61	1			1		1		4	1				
Health laws.....	3		3	3							1	1				
Incest.....																
Injury to property.....	10	2	9						2		7	1				
Municipal ordinances.....	2		7						2		1					
Non-support.....	45	1	26	2					22	1	15				1	
Non-support of illegitimate child.....			24						2		5					
Nuisance.....		1														
Official misconduct.....																
Perjury.....									1							
Prostitution.....	2	1	1	1					1	1						
Rape.....									2		1					
Receiving stolen goods.....	3		8						1		5	1				
Removing crop.....									1							
Resisting Officer.....	11		11						1		1					
Robbery.....									2		1					
Seduction.....																
Slander.....		1							1		1					
Trespass.....	8		10	2					3	2	6					
Vagrancy.....	4		12	2							1	1				
Worthless Check.....	6		11						1		1					
False pretense.....	10	3	14	1					6		11					
Carnal knowledge, etc.....											2					
Crime against nature.....																
Slot machine laws.....	1															
Kidnaping.....									1							
Revenue act violations.....	2		3													
Miscellaneous.....	3	1	7	4					9	2	3					
Totals.....	1132	56	1271	96			4		274	17	277	30			6	

Bound over to Superior Court..... 32
 Convictions..... 2,559
 Nol-pros..... 229

Acquittals..... 319
 Other dispositions..... 24
 Total..... 3,163

FOURTH JUDICIAL DISTRICT INFERIOR COURTS

Offense	JULY 1, 1942-JANUARY 1, 1944															
	CONVICTIONS								OTHER DISPOSITIONS							
	White		Negro		Indian		Unclassified		White		Negro		Indian		Unclassified	
	M	F	M	F	M	F	M	F	M	F	M	F	M	F	M	F
Assault.....	81	6	91	21			5		41	5	31	15	1		3	
Assault and battery.....	1															
Assault with deadly weapon.....	91	1	178	54	1		4	2	43	8	39	28				1
Assault on female.....	50		60				1		7		17					
Assault with intent to kill.....									1		2					
Assault with intent to rape.....									2		1					
Assault—secret.....			1									1				
Drunk—drunk and disorderly.....	360	9	158	20	14	4	16		15	2	6	1	2			
Possession—illegal whiskey.....	61	2	31	5					1		3	1				
Possession for sale—sale.....	34	10	53	25				1	9		14	4				
Manufacturing—possession of material for.....	34	1	18	1					2		2				1	
Transportation.....	12		11				1		1		1					
Violation liquor laws.....	82	6	80	10			2		10	3	17	4				
Driving drunk.....	328	3	123		1		6		74	1	12				2	
Reckless driving.....	127	3	45		1		2		37	4	11				1	
Hit and run.....	5		3								1					
Speeding.....	63		8	1			3		3							
Auto license violations.....	108	3	42		2		2		7	1	3		1			
Violation motor vehicle laws.....	52	1	22	1			1		10		4					
Breaking and entering.....			4	1					12		11					
And larceny.....			2						3		8					
And receiving.....											1					
Housebreaking.....									1							
And larceny.....									7	1	5					
And receiving.....																
Storebreaking.....																
And larceny.....									2		1					
And receiving.....																
Larceny.....	82	3	159	20			1		56	4	67	11			3	1
Larceny and receiving.....	1		5								1					
Larceny from the person.....			1	1					3		4					
Larceny by trick and device.....			1													
Larceny of automobile.....									1		1					
Temporary larceny.....	6		2								2					
Murder—first degree.....									1		3					
Murder—second degree.....																
Manslaughter.....									2							
Burglary—first degree.....																
Burglary—second degree.....																
Abandonment.....	30	2	20	1					10	3	6	2				
Abduction.....	1		1						2	1	1					
Affray.....	28	2	31	17			1		11	6	12	5				
Arson.....																
Bigamy.....									2		1					
Bribery.....																
Burning other than arson.....															1	
Carrying concealed weapon.....	18		52	2					7		6	2			1	

FOURTH JUDICIAL DISTRICT—Continued

Offense	JULY 1, 1942-JANUARY 1, 1944															
	CONVICTIONS								OTHER DISPOSITIONS							
	White		Negro		Indian		Unclas- sified		White		Negro		Indian		Unclas- sified	
	M	F	M	F	M	F	M	F	M	F	M	F	M	F	M	F
Contempt.....																
Conspiracy.....																
Cruelty to animals.....	4								1		1					
Disorderly conduct.....	20	1	38	10			1		11	2	9	1				
Disorderly house.....	1	6	2	3					2			1				
Disposing of mortgaged property.....	1	1	1						3		1					
Disturbing religious worship.....			1													
Violation of election laws.....																
Embezzlement.....									3		1					
Escape.....	4		4													
Failure to list tax.....																
Food and drug laws.....																
Fish and Game laws.....	1								1							
Forcible trespass.....	3		5													
Forgery.....		2							4		1					
Fornication and adultery.....	14	16	10	8					8	8	4	2				
Gaming and lottery laws.....	17		44	1					1		24	2				
Health laws.....	2	1	4	3					1	1	1					
Incest.....																
Injury to property.....	16		9	1	1				9	1	3					
Municipal ordinances.....	7		2				2		5		1					
Non-support.....	48		24	1					14	1	14	1				
Non-support of illegitimate child.....	7		24				1		5		7				1	
Nuisance.....	1	2							1	1						
Official misconduct.....									1							
Perjury.....									1							
Prostitution.....	19	69	39	36					3	11	10	6				
Rape.....									2		1				1	
Receiving stolen goods.....			11	1					4	1	9	2				
Removing crop.....	4								7							
Resisting Officer.....	20		9	1							1					
Robbery.....	1		2						6		5					
Seduction.....									2							
Slander.....	1								4	2	1	1				
Trespass.....	26	1	15	1					15	1	6	1				
Vagrancy.....	8	5	12	1					8	2	4	1				
Worthless Check.....	17		3						4		8				1	
False pretense.....	2		4						8	2	5					
Carnal knowledge, etc.....			2						2		5					
Crime against nature.....																
Slot machine laws.....	1	1	2						3							
Kidnaping.....																
Revenue act violations.....	1															
Miscellaneous.....	7		1	1					8	3	3	1			1	
U. C. C. Violations.....	4		4	9					1	1	2	2				
Totals.....	1921	157	1474	257	20	4	49	3	539	78	421	95	4		14	3

Bound over to Superior Court..... 104

Convictions..... 3,885

Nol-pros..... 249

Acquittals..... 534

Other dispositions..... 267

Total..... 5,039

FIFTH JUDICIAL DISTRICT INFERIOR COURTS

Offense	JULY 1, 1942-JANUARY 1, 1944															
	CONVICTIONS								OTHER DISPOSITIONS							
	White		Negro		Indian		Unclas- sified		White		Negro		Indian		Unclas- sified	
	M	F	M	F	M	F	M	F	M	F	M	F	M	F	M	F
Assault.....	26		23	6					3	1	4	1				
Assault and battery.....																
Assault with deadly weapon.....	30		89	13			1		11		16	5				
Assault on female.....	5		15						2		4					
Assault with intent to kill.....																
Assault with intent to rape.....																
Assault—secret.....																
Drunk—drunk and disorderly.....	120	1	96				1		4		3					
Possession—illegal whiskey.....			4													
Possession for sale—sale.....	3		9	4							3	1				
Manufacturing—possession of material for.....	2		2													
Transportation.....	3		3													
Violation liquor laws.....	12		50	40							11	6				
Driving drunk.....	133	2	42						22		3					
Reckless driving.....	66	1	33						25	5	6					
Hit and run.....																
Speeding.....	87	1	12						3							
Auto license violations.....	56		58	1												
Violation motor vehicle laws.....	324	14	43				4		23		5					
Breaking and entering.....			1								2					
And larceny.....									3							
And receiving.....																
Housebreaking.....																
And larceny.....																
And receiving.....																
Storebreaking.....																
And larceny.....																
And receiving.....																
Larceny.....	30		71	12					8	2	23	1				
Larceny and receiving.....			2						2							
Larceny from the person.....									1							
Larceny by trick and device.....																
Larceny of automobile.....																
Temporary larceny.....			1													
Murder—first degree.....																
Murder—second degree.....																
Manslaughter.....																
Burglary—first degree.....																
Burglary—second degree.....																
Abandonment.....	10	1	7						2							
Abduction.....																
Affray.....	9		12	8					2		3					
Arson.....																
Bigamy.....																
Bribery.....																
Burning other than arson.....			1													
Carrying concealed weapon.....	6		21				1		2		6					

FIFTH JUDICIAL DISTRICT—Continued

Offense	JULY 1, 1942-JANUARY 1, 1944															
	CONVICTIONS								OTHER DISPOSITIONS							
	White		Negro		Indian		Unclas- sified		White		Negro		Indian		Unclas- sified	
	M	F	M	F	M	F	M	F	M	F	M	F	M	F	M	F
Contempt.....			1													
Conspiracy.....																
Cruelty to animals.....	2		1													
Disorderly conduct.....	13		22	6					1		3					
Disorderly house.....			4	1								1				
Disposing of mortgaged property.....																
Disturbing religious worship.....			4													
Violation of election laws.....																
Embezzlement.....																
Escape.....			5													
Failure to list tax.....																
Food and drug laws.....																
Fish and Game laws.....	10		1						4							
Forcible trespass.....			3													
Forgery.....																
Fornication and adultery.....			1	2					1	2	1	1				
Gaming and lottery laws.....	43	3	58	1					3		5					
Health laws.....			6	2					1		1					
Incest.....																
Injury to property.....	9		3						8							
Municipal ordinances.....	1		1						1		1					
Non-support.....	7		5						4		5					
Non-support of illegitimate child.....			6								1					
Nuisance.....	8	1		1												
Official misconduct.....																
Perjury.....																
Prostitution.....			4	1						2						
Rape.....																
Receiving stolen goods.....																
Removing crop.....									1							
Resisting Officer.....	6		8													
Robbery.....																
Seduction.....																
Slander.....	1	1		1												
Trespass.....	8		12						9		1					
Vagrancy.....			12							2	6					
Worthless Check.....	2		2						4		2					
False pretense.....	2		1													
Carnal knowledge, etc.....									3		1					
Crime against nature.....																
Slot machine laws.....																
Kidnaping.....																
Revenue act violations.....																
Miscellaneous.....	1		8						2		4					
U. C. C. Violations.....			6								3					
Totals.....	1035	25	774	99			7		155	14	123	16				

Bound over to Superior Court..... 21
 Convictions..... 1,940
 Nol-pros..... 62

Acquittals..... 206
 Other dispositions..... 19
 Total..... 2,248

SIXTH JUDICIAL DISTRICT

INFERIOR COURTS

Offense	JULY 1, 1942-JANUARY 1, 1944															
	CONVICTIONS								OTHER DISPOSITIONS							
	White		Negro		Indian		Unclas- sified		White		Negro		Indian		Unclas- sified	
	M	F	M	F	M	F	M	F	M	F	M	F	M	F	M	F
Assault.....	26	3	38	10			16	1	19	6	6	3			13	
Assault and battery.....	1	1	1						4		1					
Assault with deadly weapon.....	45	3	95	26	1		49	11	20	2	39	15			24	2
Assault on female.....	25		61				6		16		19				3	
Assault with intent to kill.....											1					
Assault with intent to rape.....																
Assault—secret.....																
Drunk—drunk and disorderly.....	737	42	346	55			7	2	64	1	23	2			2	
Possession—illegal whiskey.....	15			4	3		17				1				5	
Possession for sale—sale.....	14	1	13	5			21		2		3	1			7	1
Manufacturing—possession of material for.....			3				2		1							
Transportation.....	10		10				3				1				3	
Violation liquor laws.....	53	5	44	42			2		3	1	2	1				
Driving drunk.....	89	4	46				95	1	23	1	3		1		11	1
Reckless driving.....	102	1	43	2			40	2	26	4	13	1			21	1
Hit and run.....	2		3				2		3		1				2	
Speeding.....	88	1	23				56	2	3		2				4	
Auto license violations.....	48	2	54	5			24		3	1	5				2	
Violation motor vehicle laws.....	33	1	18				6	1	3		3				2	
Breaking and entering.....									1		5				2	
And larceny.....									5		6				3	
And receiving.....																
Housebreaking.....																
And larceny.....																
And receiving.....																
Storebreaking.....																
And larceny.....																
And receiving.....																
Larceny.....	18	2	70	17			37	9	18	4	30	8			14	2
Larceny and receiving.....	1		14				1									
Larceny from the person.....	2		1						1		4	1				
Larceny by trick and device.....																
Larceny of automobile.....	2		2				3				2					
Temporary larceny.....	2		4								2					
Murder—first degree.....																
Murder—second degree.....																
Manslaughter.....																
Burglary—first degree.....																
Burglary—second degree.....																
Abandonment.....	15		7	1			3	1	12		7	1				
Abduction.....											1					
Affray.....	15		24	17					8		11	6				
Arson.....																
Bigamy.....				1							1					
Bribery.....																
Burning other than arson.....																
Carrying concealed weapon.....	8	1	22	1			8	1	8		5	1			3	

SIXTH JUDICIAL DISTRICT—Continued

Offense	JULY 1, 1942-JANUARY 1, 1944															
	CONVICTIONS								OTHER DISPOSITIONS							
	White		Negro		Indian		Unclassified		White		Negro		Indian		Unclassified	
	M	F	M	F	M	F	M	F	M	F	M	F	M	F	M	F
Contempt.....									2							
Conspiracy.....																
Cruelty to animals.....	1						3		2							
Disorderly conduct.....	42	6	72	22			3		6	6	23	8				
Disorderly house.....	1	2	4	4			1		1	2	1	1			1	
Disposing of mortgaged property.....							1		2						1	
Disturbing religious worship.....			1													
Violation of election laws.....																
Embezzlement.....									1							
Escape.....															1	
Failure to list tax.....	1		1						40		7					
Food and drug laws.....																
Fish and Game laws.....	2															
Forcible trespass.....	9		39	1			8				4				1	
Forgery.....									11							
Fornication and adultery.....	5	4	5	6			9	5	1							
Gaming and lottery laws.....	39		94	2			2		8		11					
Health laws.....	2		4						1		1					
Incest.....																
Injury to property.....	13		12	3			2		7		12	3			8	
Municipal ordinances.....	6	4	15						4	1	1				2	
Non-support.....	22		9				7	1	13		10	1				
Non-support of illegitimate child.....			11								1					
Nuisance.....	8	2	2	3			3	3	2							
Official misconduct.....																
Perjury.....																
Prostitution.....	13	37	27	29			16	51	7	9		1				2
Rape.....																
Receiving stolen goods.....			5	1			1		4						2	
Removing crop.....											1	1				
Resisting Officer.....	1		2				4		2			1				
Robbery.....	2						1		6	1	6	2				
Seduction.....																
Slander.....									3	3					1	
Trespass.....	6	1	7	1			4		3	2	3	1			1	
Vagrancy.....	10	21	23	26					6	6	13	12	10		1	
Worthless Check.....	11	1					5		3		2	1			2	
False pretense.....							1								1	
Carnal knowledge, etc.....											1					
Crime against nature.....																
Slot machine laws.....				1												
Kidnaping.....																2
Revenue act violations.....																
Miscellaneous.....	10		2				7	1	10	1		1			1	1
U. C. C. Violations.....		1	3	1					2	1	7	1				
Totals.....	155	143	124	235	1		473	98	390	59	300	72	1		144	12

Bound over to Superior Court..... 51
 Convictions..... 3,842
 Nol-pros..... 511

Acquittals..... 350
 Other dispositions..... 66
 Total..... 4,820

SEVENTH JUDICIAL DISTRICT

INFERIOR COURTS

Offense	JULY 1, 1942-JANUARY 1, 1944															
	CONVICTIONS								OTHER DISPOSITIONS							
	White		Negro		Indian		Unclassified		White		Negro		Indian		Unclassified	
	M	F	M	F	M	F	M	F	M	F	M	F	M	F	M	F
Assault.....	24	2	18	8			1		7	4	4				1	
Assault and battery.....	70	5	70	16			10		32	4	13	2			4	
Assault with deadly weapon.....	35	2	172	52			7		25	2	56	10			3	
Assault on female.....	15		29						13		8					
Assault with intent to kill.....									4		4	2				
Assault with intent to rape.....											3					
Assault—secret.....	1															
Drunk—drunk and disorderly.....	898	56	541	37	1		78		31		2	1				
Possession—illegal whiskey.....	48	4	55	19					15	1	11	7				
Possession for sale—sale.....	22	7	75	117			2		3		4	7				
Manufacturing—possession of material for.....	5		6	1					2		2					
Transportation.....	6		4						2	1						
Violation liquor laws.....	10		5	1			2		2	1	3				1	
Driving drunk.....	140	3	46				5		34	2	1					
Reckless driving.....	47		35	1			7		19	1	9					
Hit and run.....	3		3				1		8						1	
Speeding.....	393	14	03				17		31	2	3				1	
Auto license violations.....	86	6	78	1			7		5		4	1			1	
Violation motor vehicle laws.....	68	1	34				1		3		3					
Breaking and entering.....	3		7						3		10				1	
And larceny.....											11					
And receiving.....									5		35	2				
Housebreaking.....																
And larceny.....																
And receiving.....																
Storebreaking.....																
And larceny.....																
And receiving.....																
Larceny.....	84	4	166	48			6	1	30	5	59	19			9	
Larceny and receiving.....	7		9	15			1		3		2					
Larceny from the person.....	1		2						10	1	14					
Larceny by trick and device.....			1								2					
Larceny of automobile.....	1								10		5				1	
Temporary larceny.....	3		1						2							
Murder—first degree.....									2		9	2				
Murder—second degree.....																
Manslaughter.....									2							
Burglary—first degree.....									1		1					
Burglary—second degree.....																
Abandonment.....	4		5	1					2		2					
Abduction.....																
Affray.....	38	6	54	14			8		5		5	2				
Arson.....																
Bigamy.....		1									2					
Bribery.....																
Burning other than arson.....																
Carrying concealed weapon.....	10		47	2			2		2		2				1	

SEVENTH JUDICIAL DISTRICT—Continued

Offense	JULY 1, 1942-JANUARY 1, 1944															
	CONVICTIONS								OTHER DISPOSITIONS							
	White		Negro		Indian		Unclassified		White		Negro		Indian		Unclassified	
	M	F	M	F	M	F	M	F	M	F	M	F	M	F	M	F
Contempt.....	2															
Conspiracy.....																
Cruelty to animals.....	2		1													
Disorderly conduct.....	125	19	127	39			6		8	2	15	1				
Disorderly house.....	2	1	7	1			1		3	6	1	4			1	
Disposing of mortgaged property.....	1		3				2		2		1					
Disturbing religious worship.....			5	1												
Violation of election laws.....																
Embezzlement.....									4							
Escape.....	1	3	3	2												
Failure to list tax.....																
Food and drug laws.....																
Fish and Game laws.....	3		1													
Forcible trespass.....	7		5													
Forgery.....	1		3						19		3				4	
Fornication and adultery.....	2	3	37	33			1	1	2	3	8	8			1	
Gaming and lottery laws.....	49	2	120	4			12		10		3					
Health laws.....	10		11	6					1						1	
Incest.....																
Injury to property.....	25	2	25	6			2		4	2	7	3				
Municipal ordinances.....	113	8	37	3	1		18		20	1	4	1			1	
Non-support.....	31		29				1		7		12					
Non-support of illegitimate child.....	4		10				2				5					
Nuisance.....	33	8	15	2					1	1	1					
Official misconduct.....																
Perjury.....																
Prostitution.....	8	9	6	9					3	7	2	3				
Rape.....											2				1	
Receiving stolen goods.....	2		10	5							9					
Removing crop.....	1								1							
Resisting Officer.....	10	1	14	2			2				2					
Robbery.....				1					2		13					
Seduction.....																
Slander.....																
Trespass.....	37	4	33	1			3		3	1	4	2			1	
Vagrancy.....	33	14	37	9			6		3	7	6	2			1	
Worthless Check.....	33	5	10				1		4		1					
False pretense.....			3						2		3					
Carnal knowledge, etc.....																
Crime against nature.....									3		1					
Slot machine laws.....	2			1												
Kidnaping.....																
Revenue act violations.....																
Miscellaneous.....	23	2	22	1			3		2	1	7	1				
U. C. C. Violations.....	5		49							2						
Totals.....	2592	192	2194	459	2		215	2	417	57	399	80			35	

Bound over to Superior Court..... 226
 Convictions..... 5,656
 Nol-pros..... 263

Acquittals..... 420
 Other dispositions..... 79
 Total..... 6,644

EIGHTH JUDICIAL DISTRICT **INFERIOR COURTS**

Offense	JULY 1, 1942-JANUARY 1, 1944															
	CONVICTIONS								OTHER DISPOSITIONS							
	White		Negro		Indian		Unclas- sified		White		Negro		Indian		Unclas- sified	
	M	F	M	F	M	F	M	F	M	F	M	F	M	F	M	F
Assault.....	34	7	33	11			55	12	29	12	22	13			68	19
Assault and battery.....																
Assault with deadly weapon.....	61	7	139	40			164	32	54	6	99	23			147	39
Assault on female.....	56		93				105		50		46				155	
Assault with intent to kill.....	4		6				8	4	9		8	3			20	5
Assault with intent to rape.....											1				2	
Assault—secret.....			1						3		2					
Drunk—drunk and disorderly.....	746	44	349	35	4		2041	105	31	7	10	3			54	6
Possession—illegal whiskey.....	16		22	7			1		1		7					
Possession for sale—sale.....	14	5	22	6					6	1	12	7			1	
Manufacturing—possession of material for.....	6															
Transportation.....	26	1	30	2					9		15	10				
Violation liquor laws.....	32	2	30	14			28	5	10	2	11	5			18	2
Driving drunk.....	131	6	37				110	2	48	3	9				49	1
Reckless driving.....	116	2	72				106	3	40	4	22				67	2
Hit and run.....	4	2	6				10	1	13		9				27	
Speeding.....	635	38	131	2	1		501	12	30	3	3				21	
Auto license violations.....	164	12	130	2	2	1	291	9	33	2	21				33	3
Violation motor vehicle laws.....	66	1	50				188	3	8		3				21	1
Breaking and entering.....	1		9				3	2	4		4				14	
And larceny.....			2								2	1				
And receiving.....			2				1		3		2				31	1
Housebreaking.....							2	2			1	1			10	1
And larceny.....				1												
And receiving.....			1								1				1	
Storebreaking.....							1		1						14	
And larceny.....	1								1							
And receiving.....									5		9				18	
Larceny.....	13		22	2			8		15		17	3			10	2
Larceny and receiving.....	29	6	46	8			59	17	18	7	26	9			110	37
Larceny from the person.....			1				11		4		4	1			7	
Larceny by trick and device.....	1						1								4	1
Larceny of automobile.....	2		6				7		3		6		1		38	2
Temporary larceny.....											1				8	
Murder—first degree.....									4		11				16	2
Murder—second degree.....															1	
Manslaughter.....																
Burglary—first degree.....									1	1	3				8	
Burglary—second degree.....																
Abandonment.....	10	1	9	1			9	1	15		3				17	
Abduction.....									3							
Affray.....	19		18	14			78	11	17		2				42	10
Arson.....															6	
Bigamy.....									3	4	1	2			6	3
Bribery.....																
Burning other than arson.....									2		1					
Carrying concealed weapon.....	19		30	3			52	2	14	1	5				30	

EIGHTH JUDICIAL DISTRICT—Continued

Offense	JULY 1, 1942-JANUARY 1, 1944															
	CONVICTIONS								OTHER DISPOSITIONS							
	White		Negro		Indian		Unclas- sified		White		Negro		Indian		Unclas- sified	
	M	F	M	F	M	F	M	F	M	F	M	F	M	F	M	F
Contempt.....																
Conspiracy.....									1						2	2
Cruelty to animals.....	2		3				1		2	1	1				2	
Disorderly conduct.....	104	21	89	31			343	76	42	18	9	11			61	15
Disorderly house.....							8	4			1	2			13	4
Disposing of mortgaged property.....			1						1		1					
Disturbing religious worship.....			1					2			1				4	
Violation of election laws.....																
Embezzlement.....							1		4		1				3	
Escape.....	2	1	6	3			11	3			1				6	
Failure to list tax.....																
Food and drug laws.....																
Fish and Game laws.....	6								4						1	
Forcible trespass.....	7	1	2				2								3	1
Forgery.....										1	4				3	
Fornication and adultery.....	8	8	10	4			45	40	6	6	8	11			22	13
Gaming and lottery laws.....	41		72				183	2	14	1	21	3			41	2
Health laws.....							13	1	5	1					1	
Incest.....																
Injury to property.....	31	2	25	7			43	6	19	2	22	1			42	2
Municipal ordinances.....	648	81	293	3	1		9071	55	36	1	11				68	8
Non-support.....	21		19				21		24		16				46	
Non-support of illegitimate child.....	3		3				1		1		3				2	
Nuisance.....							9	1	1		10					
Official misconduct.....																
Perjury.....																
Prostitution.....	22	53	9	23			55	97	11	17	4	6			45	49
Rape.....											2				7	
Receiving stolen goods.....	2						2	1	1	1	4				15	1
Removing crop.....	1		2						1		1					
Resisting Officer.....	27	2	22				60	4	7	2	3				12	1
Robbery.....							1		10		15	2			37	
Seduction.....									1							
Slander.....	1	1						1	1		1					1
Trespass.....	9	3	7	2			10		9	3	11	3			5	
Vagrancy.....	25	5	16				42	11	31	12	75	5			116	16
Worthless Check.....	15	1	1				17	1	9		1				2	
False pretense.....			4				4	1	3		1				6	1
Carnal knowledge, etc.....																
Crime against nature.....							1		4	1	1				5	
Slot machine laws.....	3			1			2									
Kidnaping.....									2		1					
Revenue act violations.....																
Miscellaneous.....	13	1	17	4			9		13	4	3	1			11	1
U. C. C. Violations.....							1		1						3	1
Totals.....	3197	314	1899	226	8	1	13796	529	752	125	672	125	1		1658	255

Bound over to Superior Court..... 422
 Convictions..... 19,970
 Nol-pros..... 1,432

Acquittals..... 1,323
 Other dispositions..... 371
 Total..... 23,518

NINTH JUDICIAL DISTRICT INFERIOR COURTS

Offense	JULY 1, 1942-JANUARY 1, 1944															
	CONVICTIONS								OTHER DISPOSITIONS							
	White		Negro		Indian		Unclas- sified		White		Negro		Indian		Unclas- sified	
	M	F	M	F	M	F	M	F	M	F	M	F	M	F	M	F
Assault.....	157	28	216	36	32	2			70	6	64	4	17	3		
Assault and battery.....																
Assault with deadly weapon.....	22	2	59	13	26	2			4	1	9		11	1		
Assault on female.....	10		4						1		1		1			
Assault with intent to kill.....			1								2		1			
Assault with intent to rape.....																
Assault—secret.....																
Drunk—drunk and disorderly.....	307	25	374	28	221	11	15		8		5		3		1	
Possession—illegal whiskey.....	26	3	36	6	12		2		1		5		2	1		
Possession for sale—sale.....	5	1	11	2	3								1			
Manufacturing—possession of material for.....	4		3		7		1						2			
Transportation.....	8		10		3				2							
Violation liquor laws.....	115	5	176	37	19	1			14		13	2				
Driving drunk.....	128	8	78	2	27				15	1		1				
Reckless driving.....	114	6	58	2	12				34	3	12	1	3			
Hit and run.....	3		2		2											
Speeding.....	611	34	98	2	13		6		14		1					
Auto license violations.....	161	21	71	6	31	7			3		2	1	1			
Violation motor vehicle laws.....	53	2	72		19	1			9		4		1			
Breaking and entering.....									1		4		10			
And larceny.....													1			
And receiving.....																
Housebreaking.....																
And larceny.....																
And receiving.....																
Storebreaking.....																
And larceny.....																
And receiving.....																
Larceny.....	41	6	124	28	22	2			10	2	30	4	7			
Larceny and receiving.....	2		3		2				2		1		2			
Larceny from the person.....											1					
Larceny by trick and device.....											1					
Larceny of automobile.....					1						1		2			
Temporary larceny.....																
Murder—first degree.....																
Murder—second degree.....																
Manslaughter.....																
Burglary—first degree.....											1		1			
Burglary—second degree.....																
Abandonment.....	4		6						1	1	1				1	
Abduction.....													1			
Affray.....	20	1	27	10	14	2	1		9		5	1	2	1		
Arson.....																
Bigamy.....											1					
Bribery.....																
Burning other than arson.....	1		1										1			
Carrying concealed weapon.....	12	1	32		10		1		5		7		2			

NINTH JUDICIAL DISTRICT—Continued

Offense	JULY 1, 1942-JANUARY 1, 1944															
	CONVICTIONS								OTHER DISPOSITIONS							
	White		Negro		Indian		Unclas- sified		White		Negro		Indian		Unclas- sified	
	M	F	M	F	M	F	M	F	M	F	M	F	M	F	M	F
Contempt.....			1													
Conspiracy.....																
Cruelty to animals.....	1					1			1							
Disorderly conduct.....	16	6	36	7	9		1		1	3	2	1		1		
Disorderly house.....	1			1					1							
Disposing of mortgaged property.....	1		1						2		1					
Disturbing religious worship.....			3	2	1											
Violation of election laws.....																
Embezzlement.....																
Escape.....	7		3										1			
Failure to list tax.....	1								1		1					
Food and drug laws.....																
Fish and Game laws.....	2															
Forceful trespass.....	6	1	2		2				6	1						
Forgery.....					1				3							
Fornication and adultery.....	2	2	12	7	6	2			2	2						
Gaming and lottery laws.....	57		67		2				6		1		1			
Health laws.....	2		3		2											
Incest.....																
Injury to property.....	15	3	8		4				5		2	1	2			
Municipal ordinances.....	17		6	1	2				6	1						
Non-support.....	13	1	15						8		7		1		1	
Non-support of illegitimate child.....	6				1				1							
Nuisance.....	1		3													
Official misconduct.....																
Perjury.....																
Prostitution.....	8	25	4	5	2	1			10	13	1	1				
Rape.....									1		1		1			
Receiving stolen goods.....	8		11													
Removing crop.....	1		1		1				1							
Resisting Officer.....	6		7	1	2											
Robbery.....			2										1			
Seduction.....																
Slander.....																
Trespass.....	22	1	21	3	7				6		3	2	1			
Vagrancy.....	4	7	8	1		2			1	1	1	1				
Worthless Check.....	29		6		6				3							
False pretense.....	1		5	1					4	1	3		1			
Carnal knowledge, etc.....																
Crime against nature.....																
Slot machine laws.....		1	7													
Kidnaping.....																
Revenue act violations.....	22		120	4	9	1					1					
Miscellaneous.....	20		21	3	9		2	1	1		3	1				
U. C. C. Violations.....	1		6		1											
Totals.....	2074	190	1841	208	543	35	29	1	273	36	193	21	80	8	3	

Bound over to Superior Court..... 40
 Convictions..... 4,921
 Nol-pros..... 219

Acquittals..... 293
 Other dispositions..... 67
 Total..... 5,540

TENTH JUDICIAL DISTRICT **INFERIOR COURTS**

JULY 1, 1942-JANUARY 1, 1944

Offense	CONVICTIONS																OTHER DISPOSITIONS							
	White				Negro				Indian				Unclas- sified				White		Negro		Indian		Unclas- sified	
	M		F		M		F		M		F		M		F		M		F		M		F	
	M	F	M	F	M	F	M	F	M	F	M	F	M	F	M	F	M	F	M	F	M	F	M	F
Assault.....	26	8	56	9									2		12	2							1	
Assault and battery.....	140	21	258	38								3	2	57	7	41	9							
Assault with deadly weapon.....	79	6	346	81								6	1	50	7	100	30					1		
Assault on female.....	28		41				1					3		5		7								
Assault with intent to kill.....	4		6	1										2		15	1							
Assault with intent to rape.....			1											3		4						1		
Assault—secret.....			1																					
Drunk—drunk and disorderly.....	1835	118	891	122								3	2	51	4	16	2							
Possession—illegal whiskey.....	98	7	76	32								8		13	3	12	14							
Possession for sale—sale.....	42	2	66	29								4		8		6	6							
Manufacturing—possession of material for.....	6		18	1										1		1								
Transportation.....	10		4											4		3								
Violation liquor laws.....	29	2	18	8										2		2	1							
Driving drunk.....	175	5	65	1			1					20		18		5						2		
Reckless driving.....	242	10	112	2								8		88	2	37						2		
Hit and run.....	9	1	10									2		8		4								
Speeding.....	664	28	236	1								5		18	2	4						3		
Auto license violations.....	178	11	130	3								2		25	3	23						2		
Violation motor vehicle laws.....	319	24	187	4								2		18		1	1							
Breaking and entering.....	5		7									1				2						1		
And larceny.....			4									1		1		3								
And receiving.....																1								
Housebreaking.....																4								
And larceny.....			3											4		27								
And receiving.....																1								
Storebreaking.....			1													1								
And larceny.....														3		21	1							
And receiving.....																8								
Larceny.....	54	10	154	20								3		40	6	67	24					2		
Larceny and receiving.....	1		3									4				4								
Larceny from the person.....	4		2											4	1	7	5							
Larceny by trick and device.....																1								
Larceny of automobile.....	1		4									1		1		2								
Temporary larceny.....	3		5	2										5		1								
Murder—first degree.....														3		7	2							
Murder—second degree.....																								
Manslaughter.....														7	2	3								
Burglary—first degree.....																2								
Burglary—second degree.....																								
Abandonment.....	13		7	3								1				2								
Abduction.....															1									
Affray.....	90		87	52								4		14		13	13							
Arson.....																								
Bigamy.....			2											1										
Bribery.....																1								
Burning other than arson.....																								
Carrying concealed weapon.....	23	1	137	8								3		9		8								

TENTH JUDICIAL DISTRICT—Continued

Offense	JULY 1, 1942-JANUARY 1, 1944															
	CONVICTIONS								OTHER DISPOSITIONS							
	White		Negro		Indian		Unclassified		White		Negro		Indian		Unclassified	
	M	F	M	F	M	F	M	F	M	F	M	F	M	F	M	F
Contempt.....	4		3													
Conspiracy.....			3													
Cruelty to animals.....	1															
Disorderly conduct.....	178	48	195	92			1		36	3	31	15			1	
Disorderly house.....	2	2	6	9				1	1	3	9	16				
Disposing of mortgaged property.....	2		8													
Disturbing religious worship.....											1					
Violation of election laws.....																
Embezzlement.....									7		5	1				
Escape.....	20	13	14	14			1		1							
Failure to list tax.....																
Food and drug laws.....																
Fish and Game laws.....			1													
Forcible trespass.....	30		26	3					2		1	1				
Forgery.....									18		1					
Fornication and adultery.....	8	17	23	25			2		1	3	7	2				
Gaming and lottery laws.....	191		227	9			1		34		24	1				
Health laws.....	7	2	10	3					1		1					
Incest.....																
Injury to property.....	63	7	49	11			1		11		3	5			1	
Municipal ordinances.....	614	109	206	28			3		92	14	44	14			1	1
Non-support.....	63		52	1			4		28		14					
Non-support of illegitimate child.....	4		39				1		1		5					
Nuisance.....	27	40	5	18			1		2	14		2				
Official misconduct.....																
Perjury.....	1															
Prostitution.....	51	140	69	117			1		3	18	17	16				
Rape.....									1		6					
Receiving stolen goods.....	1		7	3					1		2	2				
Removing crop.....	1										1					
Resisting Officer.....	41	9	43	13			2		4	3	5					
Robbery.....	2								2		29	1			1	
Seduction.....											1					
Slander.....	1	2														
Trespass.....	51	14	49	6			2		14	5	11					
Vagrancy.....	39	53	19	15					15	1	10	7				
Worthless Check.....	19	1	3								1					
False pretense.....	10		4						1	6	4	2			1	
Carnal knowledge, etc.....									2		7					
Crime against nature.....									3		2					
Slot machine laws.....	6	1							2							
Kidnaping.....																
Revenue act violations.....	1															
Miscellaneous.....	43	12	36	6			1		19	3	15	3				
U. C. C. Violations.....	6	3	38	27							1					
Totals.....	5565	727	4073	817	2		103	8	767	111	736	200			20	1

Bound over to Superior Court..... 246
 Convictions..... 11,295
 Nol-pros..... 791

Acquittals..... 664
 Other dispositions..... 134
 Total..... 13,130

ELEVENTH JUDICIAL DISTRICT **INFERIOR COURTS**

Offense	JULY 1, 1942-JANUARY 1, 1944															
	CONVICTIONS								OTHER DISPOSITIONS							
	White		Negro		Indian		Unclassified		White		Negro		Indian		Unclassified	
	M	F	M	F	M	F	M	F	M	F	M	F	M	F	M	F
Assault.....	101	17	131	77					42	7	37	26				
Assault and battery.....																
Assault with deadly weapon.....	66	8	364	163					36	5	131	68				
Assault on female.....	98		397						26		88					
Assault with intent to kill.....	2		1	1					2		4	1				
Assault with intent to rape.....									1		2					
Assault—secret.....																
Drunk—drunk and disorderly.....	1239	117	1011	198	1		2		12		9					
Possession—illegal whiskey.....																
Possession for sale—sale.....																
Manufacturing—possession of material for.....	1															
Transportation.....																
Violation liquor laws.....	163	10	321	203					16	5	31	23				
Driving drunk.....	162	9	53	1					14		1					
Reckless driving.....	90	5	60						221	32	81	4				
Hit and run.....	4		2						2		2					
Speeding.....	533	16	161	3					3		1					
Auto license violations.....	162	20	125	5					2		3					
Violation motor vehicle laws.....	62		43						2		4					
Breaking and entering.....											1					
And larceny.....																
And receiving.....																
Housebreaking.....											6					
And larceny.....																
And receiving.....			2						5		18					
Storebreaking.....											2					
And larceny.....																
And receiving.....	1								25		30					
Larceny.....	41	8	97	38					34	4	61	18				
Larceny and receiving.....				1					1		4	1				
Larceny from the person.....																
Larceny by trick and device.....									3		4					
Larceny of automobile.....																
Temporary larceny.....									1							
Murder—first degree.....									1		3	3				
Murder—second degree.....																
Manslaughter.....									12	2	6					
Burglary—first degree.....									1		5					
Burglary—second degree.....																
Abandonment.....		3		2												
Abduction.....																
Affray.....	12	3	6	4					1		1	1				
Arson.....																
Bigamy.....											1					
Bribery.....																
Burning other than arson.....									1							
Carrying concealed weapon.....	16	1	46	9					4		2					

ELEVENTH JUDICIAL DISTRICT—Continued

Offense	JULY 1, 1942-JANUARY 1, 1944															
	CONVICTIONS								OTHER DISPOSITIONS							
	White		Negro		Indian		Unclas- sified		White		Negro		Indian		Unclas- sified	
	M	F	M	F	M	F	M	F	M	F	M	F	M	F	M	F
Contempt.....		1		1												
Conspiracy.....																
Cruelty to animals.....																
Disorderly conduct.....	17		21	1												
Disorderly house.....	4		1	1					2	2						
Disposing of mortgaged property.....	1	1	7								2					
Disturbing religious worship.....			1													
Violation of election laws.....																
Embezzlement.....									3		9					
Escape.....		1	1	2					1							
Failure to list tax.....																
Food and drug laws.....																
Fish and Game laws.....																
Forcible trespass.....																
Forgery.....									8		2					
Fornication and adultery.....	10	10	118	113					1	1	5	5				
Gaming and lottery laws.....	133	1	830	55					17	2	19	13				
Health laws.....	4	2	26	25					2		1					
Incest.....																
Injury to property.....	30	5	40	17					13		10	2				
Municipal ordinances.....	379	65	138	28					9	2	6	2				
Non-support.....	83		116				2		41		39					
Non-support of illegitimate child.....	2		17						3		3					
Nuisance.....	118	19	131	83					18	3	22	19				
Official misconduct.....																
Perjury.....	1															
Prostitution.....	2	7	22	15					2	2	3	2				
Rape.....									2		8					
Receiving stolen goods.....	2	1	12	3					2		7	3				
Removing crop.....																
Resisting Officer.....	5	1	27	2												
Robbery.....									6		7					
Seduction.....											1					
Slander.....																
Trespass.....	35	1	47	6					14	1	6	2				
Vagrancy.....	11	39	28	19					5	6	6	3				
Worthless Check.....																
False pretense.....									3		1					
Carnal knowledge, etc.....											1					
Crime against nature.....											2					
Slot machine laws.....	1															
Kidnaping.....																
Revenue act violations.....																
Miscellaneous.....	36	8	61	35					31	1	2	5				
U. C. C. Violations.....	6	4	12	5					1		2	1				
Totals.....	3633	383	4476	1116	1		4		651	75	700	204				

Bound over to Superior Court..... 235
 Convictions..... 9,613
 Nol-pros..... 172

Acquittals..... 1,135
 Other dispositions..... 88
 Total..... 11,243

TWELFTH JUDICIAL DISTRICT INFERIOR COURTS

Offense	JULY 1, 1942-JANUARY 1, 1944															
	CONVICTIONS								OTHER DISPOSITIONS							
	White		Negro		Indian		Unclas- sified		White		Negro		Indian		Unclas- sified	
	M	F	M	F	M	F	M	F	M	F	M	F	M	F	M	F
Assault.....	144	32	75	33			21		45	19	10	19			3	2
Assault and battery.....																
Assault with deadly weapon.....	153	16	285	77			9		71	12	69	31			4	
Assault on female.....	142		186				3		63		45				2	
Assault with intent to kill.....	4	1	7	7					3		1	3				
Assault with intent to rape.....	1		2													
Assault—secret.....	1		1													
Drunk—drunk and disorderly.....	2747	274	717	120	2		102	10	51	8	8	3			1	
Possession—illegal whiskey.....	29	4	16	6			3		4		10	1				
Possession for sale—sale.....	29	6	62	43					4		11	3				
Manufacturing—possession of material for.....	4		3													
Transportation.....	11	6							8	4		1				
Violation liquor laws.....	97	5	69	17			5	2	6	1	12	5			2	2
Driving drunk.....	220	11	45	1			10		27	1	3					
Reckless driving.....	270	9	103	1			15		166	10	32	3			5	
Hit and run.....	28	1	12						9		10					
Speeding.....	1140	43	178	6			54		10		2					
Auto license violations.....	255	23	130	8			7	1	33	4	15					
Violation motor vehicle laws.....	54	2	22	1			4		5		5					
Breaking and entering.....	7		10				1		3		3				1	
And larceny.....	2		1								2				4	
And receiving.....	18		34	1					6		9				1	
Housebreaking.....																
And larceny.....																
And receiving.....																
Storebreaking.....																
And larceny.....																
And receiving.....																
Larceny.....	40	7	85	13			2		22	3	16	4			3	
Larceny and receiving.....	76	8	97	21			4		22	9	29	5			2	
Larceny from the person.....	6		15	5					2	2	6	5				
Larceny by trick and device.....	2		3								1					
Larceny of automobile.....	10		6						8							
Temporary larceny.....	1		2						1		1					
Murder—first degree.....									2		7	4				
Murder—second degree.....																
Manslaughter.....									9	1	3					
Burglary—first degree.....											6					
Burglary—second degree.....																
Abandonment.....	60	6	24	2			2		35	6	8				2	
Abduction.....		1														
Affray.....	139	19	112	68					63	10	30	16			1	
Arson.....																
Bigamy.....		5	1	1					2		1	2				
Bribery.....																
Burning other than arson.....																
Carrying concealed weapon.....	32	1	38	5			1		4	1	1	2			2	

TWELFTH JUDICIAL DISTRICT—Continued

Offense	JULY 1, 1942-JANUARY 1, 1944															
	CONVICTIONS								OTHER DISPOSITIONS							
	White		Negro		Indian		Unclassified		White		Negro		Indian		Unclassified	
	M	F	M	F	M	F	M	F	M	F	M	F	M	F	M	F
Contempt.....	7		9								1					
Conspiracy.....	5	1	3	1					1		2	2				
Cruelty to animals.....	2								1		1					
Disorderly conduct.....	175	62	164	90			5	2	52	18	15	19			3	
Disorderly house.....	1	1	1	1			1		1	1						
Disposing of mortgaged property.....	2		4													
Disturbing religious worship.....							1				1					
Violation of election laws.....																
Embezzlement.....	10		7						2		2					
Escape.....	35	16	34	3					9	1	3	1			1	
Failure to list tax.....																
Food and drug laws.....	2															
Fish and Game laws.....																
Forceful trespass.....	19		9	2					11	2	5					
Forgery.....	14	2	10	1					1		4					
Fornication and adultery.....	17	22	23	21					8	4	1	2				
Gaming and lottery laws.....	219	5	189	4			17		30		21	1			1	
Health laws.....	4	2	32	36			2		1	1		4				
Incest.....	1															
Injury to property.....	54	6	32	12			1		17	1	12	4			1	
Municipal ordinances.....	364	44	117	6			7		54	4	17	4			1	
Non-support.....	123	4	56	1			1		54	3	20	1			3	
Non-support of illegitimate child.....	7		30				1		4		10					
Nuisance.....	3		1						2	3						
Official misconduct.....																
Perjury.....			3								1					
Prostitution.....	141	157	44	37			2		41	18	23	14				
Rape.....									2		2					
Receiving stolen goods.....	9	2	2	1					10		3	1			1	
Removing crop.....																
Resisting Officer.....	19	1	7	2			1		6	1	2	2				
Robbery.....	9		15						1		1	1			1	
Seduction.....			1						1							
Slander.....		2								2						
Trespass.....	37	3	22	3					16	1	3	1				
Vagrancy.....	58	106	45	34			1	2	27	23	27	10			1	1
Worthless Check.....	32	3	8						6	1	1					
False pretense.....	5	1	3	2					7	1	3					
Carnal knowledge, etc.....	3															
Crime against nature.....	2								1							
Slot machine laws.....	2								1							
Kidnaping.....									1							
Revenue act violations.....				3							3					
Miscellaneous.....	179	27	87	10			3	2	45	3	24	4			1	
U. C. C. Violations.....	4	1	4						4	1	1					
Totals.....	7291	944	3303	705	2		286	19	1100	181	565	178			47	5

Bound over to Superior Court..... 62
 Convictions..... 12,550
 Not-pros..... 746

Acquittals..... 821
 Other dispositions..... 447
 Total..... 14,626

THIRTEENTH JUDICIAL DISTRICT INFERIOR COURTS

Offense	JULY 1, 1942-JANUARY 1, 1944															
	CONVICTIONS								OTHER DISPOSITIONS							
	White		Negro		Indian		Unclassified		White		Negro		Indian		Unclassified	
	M	F	M	F	M	F	M	F	M	F	M	F	M	F	M	F
Assault.....	64	8	82	13	5	---	7	7	26	5	25	4	---	---	4	1
Assault and battery.....	14	2	10	3	---	---	---	---	4	3	2	3	---	---	---	---
Assault with deadly weapon.....	90	13	175	56	7	2	11	5	44	6	52	15	2	---	7	1
Assault on female.....	25	---	26	---	---	---	---	---	18	---	8	---	---	---	---	---
Assault with intent to kill.....	1	1	3	---	2	---	---	---	4	---	4	2	---	---	---	---
Assault with intent to rape.....	1	---	1	---	---	---	---	---	1	---	---	---	---	---	---	---
Assault—secret.....	1	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---
Drunk—drunk and disorderly.....	908	34	735	72	37	---	228	7	35	1	30	1	---	---	8	---
Possession—illegal whiskey.....	31	1	33	14	---	---	5	---	4	---	11	7	---	---	2	---
Possession for sale—sale.....	19	---	69	24	5	---	7	1	4	2	16	6	---	---	---	---
Manufacturing—possession of material for.....	5	---	6	2	---	---	---	---	2	---	1	---	---	---	---	---
Transportation.....	29	1	28	4	3	---	7	---	5	1	4	---	---	---	---	---
Violation liquor laws.....	52	5	49	10	3	---	2	---	7	1	9	---	---	---	1	2
Driving drunk.....	253	7	100	2	3	---	7	---	32	---	10	---	---	---	3	---
Reckless driving.....	159	2	73	1	1	---	7	---	44	---	24	1	---	---	5	---
Hit and run.....	5	1	4	---	1	---	3	---	4	---	3	---	1	---	---	---
Speeding.....	412	8	71	---	2	---	69	2	22	---	1	---	---	---	5	---
Auto license violations.....	128	6	84	2	5	---	33	---	9	2	6	---	1	---	2	---
Violation motor vehicle laws.....	371	5	92	1	---	---	4	1	41	1	11	---	---	---	1	---
Breaking and entering.....	1	---	9	2	---	---	1	---	4	1	6	3	---	---	---	---
And larceny.....	1	---	---	---	---	---	1	---	2	---	4	---	2	---	---	---
And receiving.....	1	---	---	---	---	---	---	---	18	---	6	---	---	---	---	---
Housebreaking.....	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---
And larceny.....	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---
And receiving.....	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---
Storebreaking.....	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---
And larceny.....	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---
And receiving.....	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---
Larceny.....	45	2	91	14	1	---	4	1	17	3	44	12	1	---	4	3
Larceny and receiving.....	15	4	44	---	---	---	---	---	---	1	10	5	---	---	---	---
Larceny from the person.....	---	---	5	1	---	---	---	---	3	---	1	---	---	---	---	---
Larceny by trick and device.....	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---
Larceny of automobile.....	1	---	5	---	---	---	---	---	1	---	---	---	---	---	---	---
Temporary larceny.....	---	---	---	1	---	---	---	---	---	---	---	---	---	---	---	---
Murder—first degree.....	---	---	---	---	---	---	---	---	1	---	4	---	---	---	---	---
Murder—second degree.....	---	---	---	---	---	---	---	---	1	---	---	---	---	---	---	---
Manslaughter.....	---	---	---	---	---	---	---	---	1	---	---	---	---	---	---	---
Burglary—first degree.....	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---
Burglary—second degree.....	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---
Abandonment.....	17	1	9	---	---	---	---	---	8	1	7	---	---	---	2	---
Abduction.....	---	---	---	---	---	---	---	---	1	---	---	---	---	---	---	---
Affray.....	10	---	18	8	3	---	4	1	5	---	11	4	---	---	1	---
Arson.....	---	---	---	---	---	---	---	---	1	---	---	---	---	---	---	---
Bigamy.....	---	1	1	---	---	---	---	---	1	---	---	---	---	---	---	---
Bribery.....	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---
Burning other than arson.....	---	---	1	---	---	---	---	---	---	---	1	---	---	---	---	---
Carrying concealed weapon.....	30	1	51	4	2	---	12	---	11	---	4	3	---	---	---	---

THIRTEENTH JUDICIAL DISTRICT—Continued

Offense	JULY 1, 1942-JANUARY 1, 1944															
	CONVICTIONS								OTHER DISPOSITIONS							
	White		Negro		Indian		Unclassified		White		Negro		Indian		Unclassified	
	M	F	M	F	M	F	M	F	M	F	M	F	M	F	M	F
Contempt.....																
Conspiracy.....																
Cruelty to animals.....	1		2													
Disorderly conduct.....	33	11	60	17			5		9	2	6	2	1		3	
Disorderly house.....	1	4	1	2					1							
Disposing of mortgaged property.....			2				1		4		1	1				
Disturbing religious worship.....			6		1						3					
Violation of election laws.....																
Embezzlement.....									2	1						
Escape.....	7		2		2				2		1					
Failure to list tax.....																
Food and drug laws.....																
Fish and Game laws.....																
Forcible trespass.....	5	2	11													
Forgery.....			2						2		6					
Fornication and adultery.....	11	10	13	28	1			1	3	2	3	3			2	
Gaming and lottery laws.....	65		102	1	2		14		9		11				5	
Health laws.....	1		34	14			1				2					
Incest.....																
Injury to property.....	15	2	15	1	1		3		2	1	5	5				1
Municipal ordinances.....	28	1	8				2		10		1					
Non-support.....	40		33	1					25		16				5	
Non-support of illegitimate child.....	1		7				1		3		3				3	
Nuisance.....																
Official misconduct.....																
Perjury.....																
Prostitution.....	12	20	7	7	2		2		11	9	5	2				
Rape.....									2		3					
Receiving stolen goods.....	4		4		3				3	1	3	1				
Removing crop.....	1								2		1	1				
Resisting Officer.....	14	2	33	3			1		4		3				1	
Robbery.....	1		2								3					
Seduction.....									1							
Slander.....		2								2						
Trespass.....	14	4	17	2			5		11		8	3			3	
Vagrancy.....	5	15	8	4					5	13	1	2				
Worthless Check.....	13		4		1		2		3	1						
False pretense.....			2	1					6	1	1					
Carnal knowledge, etc.....											1					
Crime against nature.....																
Slot machine laws.....	4															
Kidnaping.....									1		1					
Revenue act violations.....									1							
Miscellaneous.....	33		19	2	1		2	1	14		5	1			2	
U. C. C. Violations.....	1		6						2	1	2					
Totals.....	2999	176	2275	317	94	2	449	29	518	63	410	87	8		69	8

Bound over to Superior Court.....

82

Convictions.....

6,341

Nol-pros.....

518

Acquittals.....

469

Other dispositions.....

94

Total.....

7,504

FOURTEENTH JUDICIAL DISTRICT **INFERIOR COURTS**

Offense	JULY 1, 1942-JANUARY 1, 1944															
	CONVICTIONS								OTHER DISPOSITIONS							
	White		Negro		Indian		Unclassified		White		Negro		Indian		Unclassified	
	M	F	M	F	M	F	M	F	M	F	M	F	M	F	M	F
Assault.....	170	45	100	43			3		75	16	35	15				
Assault and battery.....											1					
Assault with deadly weapon.....	72	8	196	81			2		99	10	163	69			2	
Assault on female.....	54		81						60		69					
Assault with intent to kill.....									1		1					
Assault with intent to rape.....									1		4					
Assault—secret.....											1					
Drunk—drunk and disorderly.....	4625	497	1242	264			43	4	116	13	36	9				
Possession—illegal whiskey.....																
Possession for sale—sale.....																
Manufacturing—possession of material for.....																
Transportation.....																
Violation liquor laws.....	284	60	134	65			4		67	16	87	48				
Driving drunk.....	231	15	61				1		63	2	7					
Reckless driving.....	148	6	52	1			3		33	1	11					
Hit and run.....	21	1	13						16		9					
Speeding.....	764	23	284	3			4		20		8					
Auto license violations.....	239	29	121	5			5		25	3	10	1			1	
Violation motor vehicle laws.....	83	4	49	1			3		6	1	1				1	
Breaking and entering.....	3								1		2					
And larceny.....	1															
And receiving.....																
House breaking.....																
And larceny.....		2	3	1					38	1	61	1				
And receiving.....																
Storebreaking.....	5															
And larceny.....	4								4		9				1	
And receiving.....																
Larceny.....	68	3	123	28			2		35	17	44	8			1	
Larceny and receiving.....	58	10	139	48			1		44	15	82	24				
Larceny from the person.....	1								5	1	5					
Larceny by trick and device.....			1													
Larceny of automobile.....			4				1		7		4					
Temporary larceny.....																
Murder—first degree.....									3		25	5				
Murder—second degree.....																
Manslaughter.....									5	1	2					
Burglary—first degree.....									3		4					
Burglary—second degree.....																
Abandonment.....	5		4						9		5				1	
Abduction.....																
Affray.....	93	19	20	24			2		24	4	7	4				
Arson.....									1		1					
Bigamy.....			2						2		5	1				
Bribery.....																
Burning other than arson.....									1							
Carrying concealed weapon.....	34	4	65	10					10		14	5				

FOURTEENTH JUDICIAL DISTRICT—Continued

Offense	JULY 1, 1942-JANUARY 1, 1944															
	CONVICTIONS								OTHER DISPOSITIONS							
	White		Negro		Indian		Unclas sified		White		Negro		Indian		Unclas sified	
	M	F	M	F	M	F	M	F	M	F	M	F	M	F	M	F
Contempt.....	1															
Conspiracy.....	2								4	1						
Cruelty to animals.....																
Disorderly conduct.....	246	48	134	64			2		33	10	31	12			1	
Disorderly house.....	2	1		5					1		1	3				
Disposing of mortgaged property.....											1					
Disturbing religious worship.....												3				
Violation of election laws.....																
Embezzlement.....	1		1						11		8					
Escape.....	1	2	1								1					
Failure to list tax.....																
Food and drug laws.....																
Fish and Game laws.....																
Forcible trespass.....	9		7	2					1	2	1					
Forgery.....	4								11		1	2				
Fornication and adultery.....	15	17	17	12					7	6		1				
Gaming and lottery laws.....	239		473	52					15		31	9				
Health laws.....	6		1	1												
Incest.....																
Injury to property.....	53	5	28	10			2		24	4	8	4				
Municipal ordinances.....	463	64	124	14			5		87	20	24	3				
Non-support.....	17		8				1		16	1	9				1	
Non-support of illegitimate child.....																
Nuisance.....	7								1	3						
Official misconduct.....																
Perjury.....																
Prostitution.....	94	212	65	78					25	30	17	17				
Rape.....									1		5					
Receiving stolen goods.....	2	1	5	5					4	1	6					
Removing crop.....											1					
Resisting Officer.....	20	2	8	4			2		5		2	1				
Robbery.....	8	3	3						23	1	25	12				
Seduction.....			1													
Slander.....		1							3	1						
Trespass.....	30	4	22	1					11	3	3	2			1	
Vagrancy.....	15	34	8	13					4	8	5	2				
Worthless Check.....	22	6	6				2		3	1						
False pretense.....	2								17		1					
Carnal knowledge, etc.....																
Crime against nature.....			3						1		2					
Slot machine laws.....	3	1	1						1							
Kidnaping.....									1	1						
Revenue act violations.....	2		3													
Miscellaneous.....	65	2	4	3					20	3	7	1				
U. C. C. Violations.....	8	12	50	7			1		1		7					
Totals.....	8300	1141	3667	845			89	4	1105	197	908	264			10	

Bound over to Superior Court..... 487
 Convictions..... 14,046
 Nol-pros..... 531

Acquittals..... 1,241
 Other dispositions..... 225
 Total..... 16,530

FIFTEENTH JUDICIAL DISTRICT **INFERIOR COURTS**

Offense	JULY 1, 1942-JANUARY 1, 1944															
	CONVICTIONS								OTHER DISPOSITIONS							
	White		Negro		Indian		Unclassified		White		Negro		Indian		Unclassified	
	M	F	M	F	M	F	M	F	M	F	M	F	M	F	M	F
Assault.....	51	14	37	20	---	---	3	2	31	10	10	7	---	---	3	---
Assault and battery.....	---	1	---	---	---	---	---	---	---	---	---	---	---	---	---	---
Assault with deadly weapon.....	120	21	198	78	---	---	12	2	43	9	37	26	---	---	11	---
Assault on female.....	75	---	58	---	---	---	4	---	34	---	17	---	---	---	5	---
Assault with intent to kill.....	---	---	---	1	---	---	---	---	---	---	---	---	---	---	---	---
Assault with intent to rape.....	---	---	---	---	---	---	---	---	1	---	---	---	---	---	---	---
Assault—secret.....	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---
Drunk—drunk and disorderly.....	822	53	328	35	---	---	36	2	30	1	4	1	---	---	4	---
Possession—illegal whiskey.....	59	7	25	7	---	---	1	---	8	---	2	2	---	---	---	---
Possession for sale—sale.....	8	1	16	3	---	---	1	---	2	---	1	1	---	---	---	---
Manufacturing—possession of material for.....	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---
Transportation.....	16	---	8	---	---	---	2	---	2	---	1	---	---	---	---	---
Violation liquor laws.....	95	7	58	16	---	---	6	---	2	3	1	1	---	---	---	---
Driving drunk.....	323	13	55	---	---	---	8	---	24	---	1	---	---	---	---	---
Reckless driving.....	154	4	45	4	---	---	7	---	61	8	8	---	---	---	5	1
Hit and run.....	14	1	5	---	---	---	3	---	10	---	3	---	---	---	2	---
Speeding.....	516	23	89	2	1	---	15	---	8	1	---	---	---	---	1	---
Auto license violations.....	66	8	35	---	---	---	5	---	6	---	3	---	---	---	---	---
Violation motor vehicle laws.....	35	---	19	---	---	---	3	---	8	2	3	---	---	---	2	---
Breaking and entering.....	3	1	3	---	---	---	1	---	3	---	---	---	---	---	---	---
And larceny.....	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---
And receiving.....	12	---	5	---	---	---	---	---	5	---	---	---	---	---	---	---
Housebreaking.....	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---
And larceny.....	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---
And receiving.....	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---
Storebreaking.....	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---
And larceny.....	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---
And receiving.....	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---
Larceny.....	47	2	62	14	---	---	2	---	20	1	6	5	---	---	7	---
Larceny and receiving.....	49	4	66	16	---	---	7	---	17	3	13	1	---	---	2	---
Larceny from the person.....	---	---	---	---	---	---	---	---	2	---	---	---	---	---	---	---
Larceny by trick and device.....	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---
Larceny of automobile.....	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---
Temporary larceny.....	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---
Murder—first degree.....	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---
Murder—second degree.....	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---
Manslaughter.....	---	---	---	---	---	---	---	---	7	---	2	---	---	---	---	---
Burglary—first degree.....	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---
Burglary—second degree.....	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---
Abandonment.....	19	4	7	1	---	---	1	---	19	2	3	1	---	---	3	---
Abduction.....	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---
Affray.....	11	1	8	4	---	---	---	---	3	---	1	---	---	---	---	---
Arson.....	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---
Bigamy.....	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---
Bribery.....	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---
Burning other than arson.....	---	---	1	---	---	---	---	---	---	---	---	---	---	---	---	---
Carrying concealed weapon.....	27	2	26	2	---	---	4	---	6	---	2	1	---	---	1	---

FIFTEENTH JUDICIAL DISTRICT—Continued

Offense	JULY 1, 1942-JANUARY 1, 1944															
	CONVICTIONS								OTHER DISPOSITIONS							
	White		Negro		Indian		Unclassified		White		Negro		Indian		Unclassified	
	M	F	M	F	M	F	M	F	M	F	M	F	M	F	M	F
Contempt.....																
Conspiracy.....																
Cruelty to animals.....	2															
Disorderly conduct.....	29	7	22	12			4	1	11	1	5	1			1	
Disorderly house.....	2	1														
Disposing of mortgaged property.....	1								1	1						
Disturbing religious worship.....			3													
Violation of election laws.....																
Embezzlement.....	3															
Escape.....	5		6	1			1									
Failure to list tax.....																
Food and drug laws.....																
Fish and Game laws.....																
Forcible trespass.....	20	1	9	4			1	1			2					
Forgery.....	1								3		2				1	1
Fornication and adultery.....	13	15	7	6					4	2	1	1				
Gaming and lottery laws.....	216		120	5			20		14		11	2			1	
Health laws.....	4	2	5	4			1				2					
Incest.....																
Injury to property.....	24	2	8	3					4	2	1				1	
Municipal ordinances.....	75	6	14	1			2		4						2	
Non-support.....	74	2	26	1			3		32	1	13				5	
Non-support of illegitimate child.....			5						4							
Nuisance.....		1							2							
Official misconduct.....																
Perjury.....	1															
Prostitution.....	21	23	8	4			1		3	3	1					
Rape.....									8		1					
Receiving stolen goods.....	2	1	4				3		3		4					
Removing crop.....	1															
Resisting Officer.....	29	1	8	6			1	1	2	1	1	1				
Robbery.....	3								2						2	
Seduction.....																
Slander.....		2					1					1				
Trespass.....	16	1	15	2			3		11	1	1	1				
Vagrancy.....	23	17	22	5			3		7	1	2	1				
Worthless Check.....	5		2				1		2							
False pretense.....	5	3	7				1		2		4					
Carnal knowledge, etc.....			1													
Crime against nature.....															1	
Slot machine laws.....	3		1				1									
Kidnaping.....																
Revenue act violations.....																
Miscellaneous.....	14	3	15	1			3		21	2	1				1	
U. C. C. Violations.....	2	1	1													
Totals.....	3116	256	1463	258	1		166	10	491	57	167	57			61	2

Bound over to Superior Court..... 50
 Convictions..... 5,270
 Nol-pros..... 243

Acquittals..... 384
 Other dispositions..... 158
 Total..... 6,105

SIXTEENTH JUDICIAL DISTRICT INFERIOR COURTS

Offense	JULY 1, 1942-JANUARY 1, 1944															
	CONVICTIONS								OTHER DISPOSITIONS							
	White		Negro		Indian		Unclas- sified		White		Negro		Indian		Unclas- sified	
	M	F	M	F	M	F	M	F	M	F	M	F	M	F	M	F
Assault.....	67	10	26	7					24	9	7	7				
Assault and battery.....																
Assault with deadly weapon.....	118	12	71	23					49	7	37	14				
Assault on female.....	75		32						20		7					
Assault with intent to kill.....												1				
Assault with intent to rape.....									1							
Assault—secret.....									1							
Drunk—drunk and disorderly.....	958	51	271	30					57	1	12	2			1	
Possession—illegal whiskey.....	24	2	3	1					4							
Possession for sale—sale.....	18	1	5						1		1					
Manufacturing—possession of material for.....	10		2						1	1	1					
Transportation.....	8		4						3							
Violation liquor laws.....	44		23	7					4		4					
Driving drunk.....	137		20						24		4					
Reckless driving.....	83	4	12						25	1	5					
Hit and run.....	9								2		2					
Speeding.....	147		16						9							
Auto license violations.....	62	3	10						3	2	1					
Violation motor vehicle laws.....	47	2	16	1					7		3					
Breaking and entering.....			5						3		4	1				
And larceny.....	4		3						1		1					
And receiving.....	3								1		2	1				
Housebreaking.....																
And larceny.....																
And receiving.....																
Storebreaking.....																
And larceny.....																
And receiving.....																
Larceny.....	67	2	30	3					21	5	12	5				
Larceny and receiving.....	4	2	5	3					3		5	1				
Larceny from the person.....									2	2						
Larceny by trick and device.....																
Larceny of automobile.....			1						3		4					
Temporary larceny.....																
Murder—first degree.....									1		3	1				
Murder—second degree.....																
Manslaughter.....									10	1						
Burglary—first degree.....																
Burglary—second degree.....																
Abandonment.....	28	1	5	1					10	1	5					
Abduction.....										1						
Affray.....	55	12	22	17					14	2	8	11				
Arson.....																
Bigamy.....									5		2	2				
Bribery.....																
Burning other than arson.....																
Carrying concealed weapon.....	7		3						2							

SIXTEENTH JUDICIAL DISTRICT—Continued

Offense	JULY 1, 1942-JANUARY 1, 1944															
	CONVICTIONS								OTHER DISPOSITIONS							
	White		Negro		Indian		Unclassified		White		Negro		Indian		Unclassified	
	M	F	M	F	M	F	M	F	M	F	M	F	M	F	M	F
Contempt.....	1															
Conspiracy.....									1							
Cruelty to animals.....	2															
Disorderly conduct.....	23	5	17	6					8	2		1				
Disorderly house.....	1	2	1								3					
Disposing of mortgaged property.....	1		2						2							
Disturbing religious worship.....	1		4						1							
Violation of election laws.....																
Embezzlement.....	1		1						1		2					
Escape.....	3		1							1						
Failure to list tax.....			1													
Food and drug laws.....																
Fish and Game laws.....																
Forcible trespass.....	12		7	1					7		1					
Forgery.....	2								6							
Fornication and adultery.....	9	7	6	5					3	3	2	2				
Gaming and lottery laws.....	62		40						8		8					
Health laws.....	1		10	4					1	1	1	1				
Incest.....																
Injury to property.....	12		5						11		3					
Municipal ordinances.....	3		3						2		3	1				
Non-support.....	81		15	1					30		7					
Non-support of illegitimate child.....	7		8						2		4					
Nuisance.....	2			1					2							
Official misconduct.....																
Perjury.....																
Prostitution.....	19	14	10	10					8	5	3	3				
Rape.....									2		1					
Receiving stolen goods.....	4		1						3		1					
Removing crop.....																
Resisting Officer.....																
Robbery.....	22	2	3	1					12	1	4					
Seduction.....									2							
Slander.....	2	1							1	1						
Trespass.....	18	8	8	3					11		1	1				
Vagrancy.....	16	10	12	4					7	3	6	1				
Worthless Check.....	7		1						2							
False pretense.....	2		2						5		1					
Caral knowledge, etc.....	2								1		3					
Crime against nature.....									1							
Slot machine laws.....	2								1							
Kidnaping.....																
Revenue act violations.....																
Miscellaneous.....	17	2							7	1	2					
U. C. C. Violations.....	4	1	4						2							
Totals.....	2314	154	747	129					461	51	185	57			1	

Bound over to Superior Court..... 76
 Convictions..... 3,344
 Nol-pros..... 237

Acquittals..... 340
 Other dispositions..... 102
 Total..... 4,099

[illegible]

SEVENTEENTH JUDICIAL DISTRICT—Continued

Offense	JULY 1, 1942-JANUARY 1, 1944															
	CONVICTIONS								OTHER DISPOSITIONS							
	White		Negro		Indian		Unclassified		White		Negro		Indian		Unclassified	
	M	F	M	F	M	F	M	F	M	F	M	F	M	F	M	F
Contempt.....																
Conspiracy.....																
Cruelty to animals.....																
Disorderly conduct.....	1		1													
Disorderly house.....																
Disposing of mortgaged property.....																
Disturbing religious worship.....																
Violation of election laws.....																
Embezzlement.....																
Escape.....																
Failure to list tax.....																
Food and drug laws.....																
Fish and Game laws.....																
Forceful trespass.....	6		1	1												
Forgery.....																
Fornication and adultery.....																
Gaming and lottery laws.....	1		2						3							
Health laws.....																
Incest.....																
Injury to property.....																
Municipal ordinances.....																
Non-support.....			1													
Non-support of illegitimate child.....																
Nuisance.....	4	2							1							
Official misconduct.....																
Perjury.....																
Prostitution.....																
Rape.....																
Receiving stolen goods.....	3															
Removing crop.....																
Resisting Officer.....	2	1							2							
Robbery.....																
Seduction.....																
Slander.....																
Trespass.....		1	2	1					1							
Vagrancy.....																
Worthless Check.....																
False pretense.....																
Carnal knowledge, etc.....																
Crime against nature.....																
Slot machine laws.....	8															
Kidnaping.....																
Revenue act violations.....																
Miscellaneous.....												1				
Totals.....	277	14	29	3					21	1	5	1				

Bound over to Superior Court..... 1
 Convictions..... 323
 Nol-pros.....

Acquittals..... 22
 Other dispositions..... 5
 Total..... 351

EIGHTEENTH JUDICIAL DISTRICT **INFERIOR COURTS**

Offense	JULY 1, 1942-JANUARY 1, 1944															
	CONVICTIONS								OTHER DISPOSITIONS							
	White		Negro		Indian		Unclassified		White		Negro		Indian		Unclassified	
	M	F	M	F	M	F	M	F	M	F	M	F	M	F	M	F
Assault.....	46	3	8	5					22	4	6	6			1	
Assault and battery.....																
Assault with deadly weapon.....	66	7	43	19			2		36	5	18	8			5	
Assault on female.....	2		1						2		2					
Assault with intent to kill.....																
Assault with intent to rape.....																
Assault—secret.....																
Drunk—drunk and disorderly.....	221	11	54	3			1		26	1	7					
Possession—illegal whiskey.....	1		3	1												
Possession for sale—sale.....			2								1					
Manufacturing—possession of material for.....	5		4						1							
Transportation.....	1		2													
Violation liquor laws.....	62	3	44	4					21	3	12	1			1	
Driving drunk.....	95	3	9				1		16	1	3					
Reckless driving.....	54		15	1			2		23	1	3					
Hit and run.....	5		1						4	1	1					
Speeding.....	100	2	14						23		1					
Auto license violations.....	99	14	8	1					5	1	3					
Violation motor vehicle laws.....	12	1	3						4	1	1					
Breaking and entering.....									2	2	2				1	
And larceny.....	3	2							7		3				2	
And receiving.....																
Housebreaking.....																
And larceny.....																
And receiving.....																
Storebreaking.....																
And larceny.....																
And receiving.....																
Larceny.....	44	6	21	6					35	3	20	3			2	
Larceny and receiving.....			1													
Larceny from the person.....																
Larceny by trick and device.....																
Larceny of automobile.....	1														1	
Temporary larceny.....																
Murder—first degree.....									5		1				2	
Murder—second degree.....																
Manslaughter.....											2					
Burglary—first degree.....																
Burglary—second degree.....																
Abandonment.....	18	1	3	1			2		7	2						
Abduction.....																
Affray.....	7	2							1		1					
Arson.....									1							
Bigamy.....									3							
Bribery.....																
Burning other than arson.....	1								1							
Carrying concealed weapon.....	10		6						8		3				1	

EIGHTEENTH JUDICIAL DISTRICT—Continued

Offense	JULY 1, 1942-JANUARY 1, 1944															
	CONVICTIONS								OTHER DISPOSITIONS							
	White		Negro		Indian		Unclas- sified		White		Negro		Indian		Unclas- sified	
	M	F	M	F	M	F	M	F	M	F	M	F	M	F	M	F
Contempt.....	1								1							
Conspiracy.....																
Cruelty to animals.....	1	1														
Disorderly conduct.....	11	2	4	4					9	2	3	3				
Disorderly house.....	1	1														
Disposing of mortgaged property.....	2								1	1						
Disturbing religious worship.....									3							
Violation of election laws.....																
Embezzlement.....	2								1							
Escape.....	2															
Failure to list tax.....																
Food and drug laws.....																
Fish and Game laws.....																
Forcible trespass.....	8		2	1					2		4					
Forgery.....									3						3	
Fornication and adultery.....	7	3		1			1	2	2						1	
Gaming and lottery laws.....	10		12					5		1						
Health laws.....	1		5	2						1						
Incest.....	1															
Injury to property.....	9	1		1			1	10								
Municipal ordinances.....	1							1								
Non-support.....	37		8					12		2						
Non-support of illegitimate child.....	3							1		2						
Nuisance.....	1															
Official misconduct.....																
Perjury.....																
Prostitution.....	4	9		1				2	3							
Rape.....								3							1	
Receiving stolen goods.....			1					4		2					1	
Removing crop.....								1								
Resisting Officer.....	8		4	4				3								
Robbery.....		1						1		2						
Seduction.....																
Slander.....								1		1						
Trespass.....	9		3	4				5	2	3	1					
Vagrancy.....	7	1	2					4	1	1						
Worthless Check.....	6							2		1						
False pretense.....	1							8								
Carnal knowledge, etc.....																
Crime against nature.....																
Slot machine laws.....	3	1	1	1												
Kidnaping.....																
Revenue act violations.....																
Miscellaneous.....	31	8	4	3				10	2	1						
U. C. C. Violations.....	1							1								
Totals.....	1021	83	288	63			9	1	349	38	114	22			-22	

Bound over to Superior Court..... 60
 Convictions..... 1,465
 Nol-pros..... 204

Acquittals..... 231
 Other dispositions..... 50
 Total..... 2,010

NINETEENTH JUDICIAL DISTRICT **INFERIOR COURTS**

Offense	JULY 1, 1942-JANUARY 1, 1944															
	CONVICTIONS								OTHER DISPOSITIONS							
	White		Negro		Indian		Unclassified		White		Negro		Indian		Unclassified	
	M	F	M	F	M	F	M	F	M	F	M	F	M	F	M	F
Assault.....	12	7	2	3					7	1	1	2				
Assault and battery.....																
Assault with deadly weapon.....	13	1	15	5					19	1	9	9				
Assault on female.....	7		7						12		6					
Assault with intent to kill.....									3		2					
Assault with intent to rape.....																
Assault—secret.....																
Drunk—drunk and disorderly.....	651	109	64	20	2				77	5	3	1				
Possession—illegal whiskey.....	3	2	3	1					2	1		1				
Possession for sale—sale.....																
Manufacturing—possession of material for.....	2		1						1							
Transportation.....																
Violation liquor laws.....	5	1	4	5					3	1	2	1				
Driving drunk.....	20		2	1					15	1	1					
Reckless driving.....	2	1							19	4	3					
Hit and run.....	2								2							
Speeding.....	14	2	2						2							
Auto license violations.....	1		2													
Violation motor vehicle laws.....																
Breaking and entering.....			2						31	2	7					
And larceny.....																
And receiving.....																
Housebreaking.....																
And larceny.....																
And receiving.....																
Storebreaking.....																
And larceny.....																
And receiving.....																
Larceny.....	10	6	11	4					12	3	10	4				
Larceny and receiving.....																
Larceny from the person.....																
Larceny by trick and device.....																
Larceny of automobile.....											1					
Temporary larceny.....																
Murder—first degree.....											5					
Murder—second degree.....																
Manslaughter.....																
Burglary—first degree.....																
Burglary—second degree.....																
Abandonment.....																
Abduction.....												1				
Affray.....	4								2	1	1	2				
Arson.....																
Bigamy.....									1							
Bribery.....																
Burning other than arson.....																
Carrying concealed weapon.....	5		1						1		1					

NINETEENTH JUDICIAL DISTRICT—Continued

Offense	JULY 1, 1942-JANUARY 1, 1944															
	CONVICTIONS								OTHER DISPOSITIONS							
	White		Negro		Indian		Unclassified		White		Negro		Indian		Unclassified	
	M	F	M	F	M	F	M	F	M	F	M	F	M	F	M	F
Contempt.....		2														
Conspiracy.....																
Cruelty to animals.....																
Disorderly conduct.....	18	20	3	6			1		9	3	1	4				
Disorderly house.....	2								1	3	3					
Disposing of mortgaged property.....																
Disturbing religious worship.....	3								2	1						
Violation of election laws.....																
Embezzlement.....									2		2					
Escape.....																
Failure to list tax.....																
Food and drug laws.....																
Fish and Game laws.....																
Forcible trespass.....	5	1	1													
Forgery.....																
Fornication and adultery.....	2	6	2	3					3	2	2	2				
Gaming and lottery laws.....	40		11						1		2					
Health laws.....	1	3	3	1					4		2					
Incest.....																
Injury to property.....	1	1	2	1					1	1						
Municipal ordinances.....	17		6	1					8	3	1					
Non-support.....																
Non-support of illegitimate child.....																
Nuisance.....									2							
Official misconduct.....																
Perjury.....																
Prostitution.....	14	22	3	6					14	8	4	2				
Rape.....																
Receiving stolen goods.....	1		4						4							
Removing crop.....																
Resisting Officer.....	6		3						1							
Robbery.....									4		1	1				
Seduction.....																
Slander.....	1															
Trespass.....	7		5						4	1						
Vagrancy.....	5	16	1						8	15	1					
Worthless Check.....																
False pretense.....									1							
Carnal knowledge, etc.....																
Crime against nature.....																
Slot machine laws.....																
Kidnaping.....									3	1						
Revenue act violations.....																
Miscellaneous.....	6		1	1					3							
U. C. C. Violations.....									1	1	1					
Totals.....	880	200	161	58	2		1		278	63	70	35				

Bound over to Superior Court..... 60
 Convictions..... 1,302
 Nol-pros..... 266

Acquittals..... 1173
 Other dispositions.....
 Total..... 1,748

TWENTIETH JUDICIAL DISTRICT
INFERIOR COURTS

Offense	JULY 1, 1942-JANUARY 1, 1944															
	CONVICTIONS								OTHER DISPOSITIONS							
	White		Negro		Indian		Unclassified		White		Negro		Indian		Unclassified	
	M	F	M	F	M	F	M	F	M	F	M	F	M	F	M	F
Assault.....	13	2	1													
Assault and battery.....									1							
Assault with deadly weapon.....									2							
Assault on female.....																
Assault with intent to kill.....									2							
Assault with intent to rape.....																
Assault—secret.....																
Drunk—drunk and disorderly.....	528	37	14	2	1				54							
Possession—illegal whiskey.....	1															
Possession for sale—sale.....																
Manufacturing—possession of material for.....																
Transportation.....	1															
Violation liquor laws.....	2		1													
Driving drunk.....	24															
Reckless driving.....	11								4							
Hit and run.....																
Speeding.....	12								1							
Auto license violations.....	9								1							
Violation motor vehicle laws.....	12	3														
Breaking and entering.....	1										1					
And larceny.....									1							
And receiving.....																
Housebreaking.....																
And larceny.....																
And receiving.....																
Storebreaking.....																
And larceny.....																
And receiving.....																
Larceny.....	8		1													
Larceny and receiving.....																
Larceny from the person.....																
Larceny by trick and device.....																
Larceny of automobile.....									2		1					
Temporary larceny.....																
Murder—first degree.....																
Murder—second degree.....																
Manslaughter.....																
Burglary—first degree.....																
Burglary—second degree.....																
Abandonment.....																
Abduction.....																
Affray.....	7								6							
Arson.....																
Bigamy.....																
Bribery.....																
Burning other than arson.....									1							
Carrying concealed weapon.....	1		1						1							

TWENTIETH JUDICIAL DISTRICT—Continued

Offense	JULY 1, 1942-JANUARY 1, 1944															
	CONVICTIONS								OTHER DISPOSITIONS							
	White		Negro		Indian		Unclas- sified		White		Negro		Indian		Unclas- sified	
	M	F	M	F	M	F	M	F	M	F	M	F	M	F	M	F
Contempt.....																
Conspiracy.....																
Cruelty to animals.....																
Disorderly conduct.....	1	2		1					1							
Disorderly house.....									1							
Disposing of mortgaged property.....																
Disturbing religious worship.....																
Violation of election laws.....																
Embezzlement.....																
Escape.....	1															
Failure to list tax.....																
Food and drug laws.....																
Fish and Game laws.....																
Forcible trespass.....																
Forgery.....																
Fornication and adultery.....									1							
Gaming and lottery laws.....	11								1							
Health laws.....																
Incest.....																
Injury to property.....	1								1							
Municipal ordinances.....	7															
Non-support.....	1															
Non-support of illegitimate child.....																
Nuisance.....																
Official misconduct.....																
Perjury.....																
Prostitution.....	1															
Rape.....																
Receiving stolen goods.....																
Removing crop.....																
Resisting Officer.....									1							
Robbery.....																
Seduction.....																
Slander.....																
Trespass.....																
Vagrancy.....	5	7	1						3							
Worthless Check.....	1															
False pretense.....																
Carnal knowledge, etc.....																
Crime against nature.....											1					
Slot machine laws.....																
Kidnaping.....																
Revenue act violations.....																
Miscellaneous.....	6	1							1		1					
Totals.....	665	52	19	3	1				82	3	4					

Bound over to Superior Court.....	11	Acquittals.....	8
Convictions.....	740	Other dispositions.....	5
Nol-pros.....	65	Total.....	829

Offense	CONVICTIONS								OTHER DISPOSITIONS							
	White		Negro		Indian		Unclas- sified		White		Negro		Indian		Unclas- sified	
	M	F	M	F	M	F	M	F	M	F	M	F	M	F	M	F
Assault.....	70	13	30	20					20	2	13	7				
Assault and battery.....																
Assault with deadly weapon.....	72	8	76	25					49	5	30	9				
Assault on female.....	38		69						11		11					
Assault with intent to kill.....																
Assault with intent to rape.....																
Assault—secret.....																
Drunk—drunk and disorderly.....	1239	51	329	35			1		37	1	9	1				
Possession—illegal whiskey.....	10	1	9						5		1	4				
Possession for sale—sale.....	1								2							
Manufacturing—possession of material for.....	3	1	1						4							
Transportation.....			5								2					
Violation liquor laws.....	52		27	7					15	1	10	3				
Driving drunk.....	173	4	36				1		13		4					
Reckless driving.....	91		45				1		45	3	13					
Hit and run.....	7		2						3		1					
Speeding.....	167		43						7		1					
Auto license violations.....	62	2	42	1					5		2					
Violation motor vehicle laws.....	7		7						1		1					
Breaking and entering.....			2						13		5					
And larceny.....									1							
And receiving.....									6							
Housebreaking.....																
And larceny.....																
And receiving.....																
Storebreaking.....																
And larceny.....																
And receiving.....																
Larceny.....	35	3	5	4					29		3					
Larceny and receiving.....	11	1	15	10					9	1	5	4				
Larceny from the person.....											1					
Larceny by trick and device.....																
Larceny of automobile.....	4		2						1							
Temporary larceny.....																
Murder—first degree.....									1		1					
Murder—second degree.....																
Manslaughter.....									3							
Burglary—first degree.....																
Burglary—second degree.....																
Abandonment.....	20	1	8						8		3				1	
Abduction.....											1					
Affray.....	19	3	15	13					10		6	3				
Arson.....																
Bigamy.....																
Bribery.....																
Burning other than arson.....																
Carrying concealed weapon.....	12		6	1					1							

TWENTY-FIRST JUDICIAL DISTRICT—Continued

Offense	JULY 1, 1942-JANUARY 1, 1944															
	CONVICTIONS								OTHER DISPOSITIONS							
	White		Negro		Indian		Unclas- sified		White		Negro		Indian		Unclas- sified	
	M	F	M	F	M	F	M	F	M	F	M	F	M	F	M	F
Contempt.....																
Conspiracy.....																
Cruelty to animals.....	2															
Disorderly conduct.....	58	9	42	30					13	3	4	5				
Disorderly house.....	3	1														
Disposing of mortgaged property.....									1							
Disturbing religious worship.....											3					
Violation of election laws.....																
Embezzlement.....										1						
Escape.....	7															
Failure to list tax.....																
Food and drug laws.....																
Fish and Game laws.....																
Forcible trespass.....	9		6								1					
Forgery.....			1						4	2						
Fornication and adultery.....	7	5	2	1					3	1						
Gaming and lottery laws.....	32		1						5		2					
Health laws.....	1		1													
Incest.....																
Injury to property.....	14		4	1					6	1	2	2				
Municipal ordinances.....	14	1	11	1					4							
Non-support.....	26	1	23						16		3				1	
Non-support of illegitimate child.....			7						1		3					
Nuisance.....			1													
Official misconduct.....																
Perjury.....																
Prostitution.....	10	6	4	2					1	1	4	1				
Rape.....											1					
Receiving stolen goods.....	3	1	1	3					3		1					
Removing crop.....									1							
Resisting Officer.....	9	1	6						1		3					
Robbery.....			1													
Seduction.....	1															
Slander.....																
Trespass.....	14	3	17	4					4	1	5					
Vagrancy.....	10	7	9	1					2			1				
Worthless Check.....	8	1							1		1					
False pretense.....	1		3						4							
Carnal knowledge, etc.....																
Crime against nature.....			1								1					
Slot machine laws.....	1								1							
Kidnaping.....																
Revenue act violations.....																
Miscellaneous.....	10	1	5						5	1	2	1				
U. C. C. Violations.....	5		14	3						2	1					
Totals.....	2338	125	934	162			3		375	26	160	41			2	

Bound over to Superior Court..... 50
 Convictions..... 3,562
 Nol-pros..... 193

Acquittals..... 322
 Other dispositions..... 39
 Total..... 4,166

ALPHABETICAL LIST OF CRIMES IN INFERIOR COURTS

Offense	JULY 1, 1942-JANUARY 1, 1944	
	CONVICTIONS	OTHER DISPOSITIONS
Assault.....	3,509	1,375
Assault and battery.....	681	191
Assault with deadly weapon.....	5,398	2,445
Assault on female.....	2,132	945
Assault with intent to kill.....	69	128
Assault with intent to rape.....	8	36
Assault—secret.....	7	10
Drunk—drunk and disorderly.....	34,330	1,103
Possession—illegal whiskey.....	1,004	186
Possession for sale—sale.....	1,046	191
Manufacturing—possession of material for.....	209	41
Transportation.....	316	88
Violation liquor laws.....	3,170	612
Driving drunk.....	4,633	704
Reckless driving.....	3,389	1,532
Hit and run.....	244	179
Speeding.....	10,157	330
Auto license violations.....	4,217	370
Violation motor vehicle laws.....	3,128	280
Breaking and entering.....	102	209
And larceny.....	28	100
And receiving.....	78	145
Housebreaking.....	5	31
And larceny.....	10	147
And receiving.....	3	26
Storebreaking.....	9	21
And larceny.....	5	43
And receiving.....	1	95
Larceny.....	2,807	1,360
Larceny and receiving.....	1,015	567
Larceny from the person.....	62	125
Larceny by trick and device.....	13	17
Larceny of automobile.....	68	121
Temporary larceny.....	55	26
Murder—first degree.....		154
Murder—second degree.....		2
Manslaughter.....		88
Burglary—first degree.....		46
Burglary—second degree.....		
Abandonment.....	475	259
Abduction.....	4	16
Affray.....	1,727	508
Arson.....		11
Bigamy.....	15	58
Bribery.....		1
Burning other than arson.....	6	9
Carrying concealed weapon.....	1,089	231
Contempt.....	39	4
Conspiracy.....	15	18

**ALPHABETICAL LIST OF CRIMES IN SUPERIOR COURTS—
Continued**

Offense	JULY 1, 1942-JANUARY 1, 1944	
	CONVICTIONS	OTHER DISPOSITIONS
Cruelty to animals.....	39	23
Disorderly conduct.....	3,668	722
Disorderly house.....	132	107
Disposing of mortgaged property.....	49	37
Disturbing religious worship.....	42	23
Violation of election laws.....	1	
Embezzlement.....	31	88
Escape.....	277	32
Failure to list tax.....	39	51
Food and drug laws.....	2	
Fish and game laws.....	37	17
Forcible trespass.....	349	64
Forgery.....	47	147
Fornication and adultery.....	1,048	250
Gaming and lottery laws.....	4,887	498
Health laws.....	409	47
Incest.....	2	
Injury to property.....	908	367
Municipal ordinances.....	14,459	634
Non-support.....	1,352	647
Non-support of illegitimate child.....	284	104
Nuisance.....	573	116
Official misconduct.....		1
Perjury.....	6	8
Prostitution.....	2,253	578
Rape.....		87
Receiving stolen goods.....	189	150
Removing crop.....	16	24
Resisting officer.....	638	94
Robbery.....	86	265
Seduction.....	3	10
Slander.....	23	33
Trespass.....	874	316
Vagrancy.....	1,202	616
Worthless check.....	378	92
False Pretense.....	127	155
Carnal knowledge, etc.....	8	34
Crime against nature.....	7	31
Slot machine laws.....	65	9
Kidnaping.....		19
Revenue act violations.....	172	5
Miscellaneous.....	1,074	399
U. C. C. Violations.....	322	60

Convictions.....121,356
Other dispositions.....22,144

ALPHABETICAL LIST OF COMPANIES IN ALABAMA COUNTY

Continued

NAME OF COMPANY	CAPITAL	BUSINESS
Alabama Iron Works	100,000	Manufacturing
Alabama Lumber Co.	50,000	Lumber
Alabama Paper Co.	25,000	Paper
Alabama Steel Co.	75,000	Steel
Alabama Textile Co.	150,000	Textile
Alabama Tannery Co.	30,000	Tanning
Alabama Tobacco Co.	40,000	Tobacco
Alabama Trust Co.	100,000	Trust
Alabama Warehouse Co.	20,000	Warehouse
Alabama Woolen Co.	60,000	Woolen
Alabama Zinc Co.	80,000	Zinc
Alabama Coal Co.	120,000	Coal
Alabama Cotton Co.	90,000	Cotton
Alabama Rice Co.	35,000	Rice
Alabama Sugar Co.	45,000	Sugar
Alabama Tea Co.	55,000	Tea
Alabama Coffee Co.	65,000	Coffee
Alabama Spice Co.	75,000	Spice
Alabama Fruit Co.	85,000	Fruit
Alabama Vegetable Co.	95,000	Vegetable
Alabama Grain Co.	105,000	Grain
Alabama Oil Co.	115,000	Oil
Alabama Gas Co.	125,000	Gas
Alabama Electric Co.	135,000	Electric
Alabama Water Co.	145,000	Water
Alabama Sewer Co.	155,000	Sewer
Alabama Drainage Co.	165,000	Drainage
Alabama Irrigation Co.	175,000	Irrigation
Alabama Reclamation Co.	185,000	Reclamation
Alabama Land Co.	195,000	Land
Alabama Building Co.	205,000	Building
Alabama Construction Co.	215,000	Construction
Alabama Engineering Co.	225,000	Engineering
Alabama Surveying Co.	235,000	Surveying
Alabama Mapping Co.	245,000	Mapping
Alabama Printing Co.	255,000	Printing
Alabama Publishing Co.	265,000	Publishing
Alabama Book Co.	275,000	Book
Alabama Stationery Co.	285,000	Stationery
Alabama Stationery Co.	295,000	Stationery
Alabama Stationery Co.	305,000	Stationery
Alabama Stationery Co.	315,000	Stationery
Alabama Stationery Co.	325,000	Stationery
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Alabama Stationery Co.	345,000	Stationery
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Alabama Stationery Co.	825,000	Stationery
Alabama Stationery Co.	835,000	Stationery
Alabama Stationery Co.	845,000	Stationery
Alabama Stationery Co.	855,000	Stationery
Alabama Stationery Co.	865,000	Stationery
Alabama Stationery Co.	875,000	Stationery
Alabama Stationery Co.	885,000	Stationery
Alabama Stationery Co.	895,000	Stationery
Alabama Stationery Co.	905,000	Stationery
Alabama Stationery Co.	915,000	Stationery
Alabama Stationery Co.	925,000	Stationery
Alabama Stationery Co.	935,000	Stationery
Alabama Stationery Co.	945,000	Stationery
Alabama Stationery Co.	955,000	Stationery
Alabama Stationery Co.	965,000	Stationery
Alabama Stationery Co.	975,000	Stationery
Alabama Stationery Co.	985,000	Stationery
Alabama Stationery Co.	995,000	Stationery

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